55.

SUPREME COURT OF THE UNITED STATES.

No. 163.

SAMUEL PLATTE, COMPLAINANT AND APPELLANT,

vs.

DAVID McCLURE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR MASSACHUSETTS.

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United States of America,
Massschusetts district.

At a circuit court of the United States, begun and holden at Boston, for the first circuit and district of Massachusetts, on Monday, the fifteenth day of May, in the year of our Lord one thousand eight hundred and forty-eight, before the honorable Levi Woodbury, associate justice; Peleg Sprague, district judge.

Case of **Samuel Platt**
vs. } In equity.
Amory Houghton and al.

To the honorable the justices of the circuit court of the United States, for the first circuit, sitting in and for the district of Massachusetts, sitting in equity.

Samuel Platt, of Choconut, in the county of Susquehanna, and State of Pennsylvania, and a citizen of said State, lumberman, brings this his bill against Amory Houghton, of Cambridge, in the county of Middlesex, in the State of Massachusetts, trader, and David McLure, of said Cambridge, varnish-maker, both citizens of said State of Massachusetts.

And thereupon your orator complains and says, that, in the month of May, eighteen hundred and forty-six, at said Cambridge, your orator did bargain with one John Dallinger, jr., of said Cambridge, trader, for a certain piece of land situated in said Cambridge, which was pointed out by said Dallinger to your orator, bounded southeast on Mason street, 188 feet; southwest on Harvard street, 189 feet; northwest on land of one Mason, 142 feet; southwest on land of said Mason, 48½ feet; northwest on Moore street, 41 feet; northeast by a passage-way, 228½ feet, a plan whereof is annexed.

And your orator further shows, that said Dallinger told and represented to your orator that said premises were then subject, at that time, viz., a few days before the twelfth day of said May, to two mortgages, amounting to fifty-five hundred dollars, and that your orator would not be troubled by said mortgages, as they could lie three years after they should fall due, and your orator would have three years after possession should be taken to redeem said mortgages. And your orator was thus led to believe, and did believe, that there were such mortgages then subsisting on said premises, and that they were in the usual form. Said Dallinger told your orator that the deed was to be made to your orator by David McClure, the respondent hereinafter named.

And your orator further states, that, at that time, his business required him to leave this State, and return home immediately, and your orator went over the premises above described, which said Dallinger agreed to convey to your orator as aforesaid, and the bounds whereof were pointed out by said Dallinger; and your orator, trusting the representations of said Dallinger, who had been represented to him as a man of reputable character, relative to said mortgages, on the thirteenth day of said May paid to said Dallinger the consideration agreed upon for the price of said land, and said Dallinger agreed to deliver to Henry B. Stanton, esq., the attorney of your orator, in that behalf appointed, a deed of said premises, in the usual form, subject to the said two mortgages then on said premises, with the usual right of redemption of three years, and to no other encumbrances save such mortgages, as soon as the deed was ready; and so your orator left the business, and on the thirteenth day of said May left this State and returned home.

And your orator further states, that, some time after his return home he got a deed, whereof a copy, marked A, is annexed; and your orator, not having any means of judging of its accuracy, and not suspecting he was defrauded, supposed said deed to be correct. But your orator is now informed that the description of the premises embraced in said deed is not correct, and does not embrace all that was agreed for by your orator.

And your orator has since learned that, before the delivery of the deed above named, and on the same day, a mortgage, a copy whereof, marked B, is annexed, was made of the premises embraced in your orator's deed, and that said premises are about to be sold under a power of sale in said mortgage at auction.

Your orator is informed and believes that said McLure conveyed said premises to Adam Hoyt on the fourteenth day of May before named, and said Hoyt at the said time gave back said mortgage B to said McLure, and that the whole of said property belonged to said Dallinger, or that said McLure only had a small interest in one house on said premises, and that the title was put nominally in the name of said Hoyt, and the said transfers made with a view to cover said Dallinger's property, and that he was in truth interested therein, and that the whole transaction was contrived to injure and defraud your orator, and that said Hoyt paid nothing for said premises so conveyed to him, and said McLure paid nothing, and there was no consideration for said mortgage.

And your orator is informed and believes that said Dallinger did inform said McLure that he, said Dallinger, had told your orator the two mortgages then on the premises your orator would have three years to redeem, but that said McLure still insisted on having one, such as the one annexed, B.

And your orator further states, that he is informed and believes that said Dallinger, within two months thereafter, petitioned for the benefit of the Massachusetts insolvent laws, and said Houghton, the other respondent, on the twenty-fourth of August, 1846, took an assignment of said mortgage of said McLure, which was made by direction and on account of said Dallinger, and without consideration and void, and that said Houghton well knew that said Hoyt and McLure were acting for said Dallinger, and the said premises and mortgage were his property.

And your orator further states that said Houghton, on the seventeenth day of this May now current, gave notice to and threatened your orator that he would sell said premises under said mortgage and the power of sale therein, and would give your orator no time for redemption, and your orator supposed said Houghton was going on to do so, and had a bill drawn to restrain him therefrom, when he found, in a public newspaper of said May the twentieth, an advertisement, purporting to be signed by one David McLure, whom your orator is informed and believes to be the said McLure, the respondent, that said premises will be sold at public auction on the twenty-first day of June next. A copy of said newspaper is hereto annexed marked F, and contains said avertisement.

And your orator further states, that since he learned the form of the mortgage under which said McLure now pretends to claim, and before as well as after the time when said Houghton threatened to sell said premises, he has had repeated conversations with said McLure, in which he has informed said McLure of the facts relating to said mortgage hereinbefore set forth, and that said McLure holds said mortgage, and took the same of said Houghton, with full knowledge of all the facts relative thereto.

And so your orator says, that he believes and alleges that the power of sale contained in said mortgage under which said respondents pretend to claim was inserted therein in fraud of your orator, and designedly with a view to cheat your orator, and that the respondents are now combining, under the same, to deprive him of his estate and property, and that the same is void as against your orator.

And your orator further states, that he cannot set forth farther than he has already done which of said respondents nominally holds said mortgage, but your orator avers and will prove that neither of said respondents has any right to exercise the power of sale in said mortgage, or to sell said premises under the same, if they could ever have such right, which your orator denies, for they both took the title which they set up under and by virtue of said mortgage, knowing, or under such circumstances that they might have known, and were bound to take notice of the fraud that had been practised upon your orator; and the claim now set up by said McLure he has acquired since, being expressly informed of your orator's rights in the premises; and your orator is informed and believes that neither of these respondents ever paid anything for said mortgage or for either assignment thereof, and that they both knew in fact, before taking the title under which they now claim the power to sell your orator's land, that your orator was led and induced to buy said land in the belief that the mortgages upon it were in the ordinary form.

And your orator further states that, on being threatened by said Houghton, on the eighteenth of May current, he sent to said Houghton a demand, a copy whereof marked C is annexed, but has received no reply thereto, and so your orator avers that said Houghton has neglected and refused, when thereto reasonably requested, to render any account of the amount due and claimed on said mortgage.

And your orator further states, that as soon as he heard or suspected that said McLure again set up a claim under said mortgage, he sent to him a demand, a copy whereof marked D is annexed, but he has neglected and refused to render any account of what is due on said mortgage; he pretends to have given his notes for the reassignment of said mortgage, but this your orator believes a cover.

And your orator further states, that he is informed and believes that said respondents claim under said mortgage wholly or in part for said Dallinger, jr., and that there is some agreement or understanding that all or part of the proceeds are to be applied to his benefit.

And your orator further states, that he has requested the said respondents to delay said sale, but they refuse so to do.

And your orator avers, that he is entitled to have three years, after the time when possession shall have been taken under said mortgage of said premises, to redeem the same, if said mortgage be held good at all.

And your orator further shows, that his means are such that he cannot raise the money to pay off said mortgage; he cannot sell his own estate in the premises, or pledge the same solely because of the form of said mortgage, and he has no friends here or at home who can or will advance him the necessary money to discharge said mortgage; and if said premises are now suffered to be sold at auction, they must go at a very great sacrifice, and your orator will lose all his property and be ruined thereby.

And your orator avers that said mortgage is, by reason of the wrongful and fraudulent insertion of said power of sale, void; or that, if the respondents can make any claim under the same, your orator is entitled to have time to pay off said mortgage.

To the end, therefore, that said defendants may, if they can, show why your orator should not have the relief hereby prayed for, and may upon their several and respective corporal oaths, and according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth, as by the note hereunder written they are required to answer.

And that said mortgage be decreed void and ordered to be given up and cancelled, or that an account of the amount due on said mortgage be rendered, and that your orator may be allowed to redeem the same, and that sufficient time be given to redeem the same, and that three years be allowed therefor; and that, in the mean time, the respondents be enjoined and restrained by this honorable court from selling said mortgage at public auction; and that your orator may have such other and further relief as the nature of this case may require, and to your honors shall seem meet :

May it please your honors to grant unto your orator, not only a writ of injunction issuing out of and under the seal of this honorable court, to be directed to the said Amory Houghton and David McLure, to restrain them, or either of them, from making any sale under the said mortgage, but also a writ of subpœna, to be directed to the said Houghton and McLure, thereby commanding them at a day certain, and under a certain penalty therein to be limited, to be and appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, and further to stand to, perform, and abide such further order, direction, and decree therein, as to your honors shall seem meet; and your orator will ever pray.

SAMUEL PLATT.

C. M. Ellis, *Solicitor*.

United States of America, *Massachusetts, ss.*

Boston, *May* 20, 1847.

Personally appeared the above named Samuel Platt, and made oath to the truth of so much of the above bill as is stated as of his own knowledge, and that so much as is stated to be matter of belief, opinion, and hearsay, he verily believes to be true.

Before me. GEO. S. HILLARD,
Commissioner, &c., &c., &c.

Note.

The defendant Amory Houghton is required to answer the interrogatories numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, and the defendant McClure those numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13.

1. Whether or not did you ever take or receive any assignment or assignments or transfer of the mortgage, whereof a copy marked B is hereto annexed; if yea, when was the same made, and where and in whose presence? Annex a copy thereof to your answer. Whether or not did you pay any, and, if any, what sum of money, at the time of such transfers or transfer?

2. Whether or not do you now claim any interest in or under said mortgage? If yea, annex a copy of the instrument under which you claim, if in writing; and if not, state under what agreement, and when and where the same was made, and in whose presence.

3. Whether or not did you agree with any person for an assignment of said mortgage, and with whom; and whether or not you had conversation with John Dallinger, jr., relative thereto, and what?

4. Whether you have or not had dealings with John Dallinger, jr., for two years past? If yea, annex a copy of your accounts.

5. Whether you have not had dealings with the other respondent for a year past? If yea, annex copy of your account.

6. If, in answer to interrogatory No. 1, you say you did pay any money, to whom was it paid?

7. Whether or not was John Dallinger, jr., May 14, 1846, in any way interested in the premises described in mortgage marked B.

8. What sums of money have been paid, or agreed to be paid, or understood to be paid, to said John Dallinger, jr., or to any other person for him, or reckoned in his accounts, and how, on each and all of the

transfers of the property described in the mortgage marked B? State fully.

9. Whether or not has Samuel Platt, the complainant, within one year past, complained to and informed you that he was led to take his deed in the belief and assurance that he had three years' right of redemption under the mortgages, and when?

10. Whether or not have you any agreement or understanding with the other respondent, or any other, and if any what person, as to the selling of the premises described in mortgage marked B, and annexed hereto, and the disposition of the proceeds thereof; if yea, what is it? State it fully, when and where was it made, and in whose presence.

11. Whether or not did you, May 17, 1847, threaten to sell the premises under the power of sale in mortgage marked B?

12. Whether or not did you direct the advertisement marked in the newspaper annexed, and marked F?

13. Whether or not has any reassignment of said mortgage been made from said Houghton to said McClure; when was the same made; when does it bear date; what consideration was paid therefor; were any notes given; if yea, who now holds them; who held them on the twentieth of May current; was any writing besides said assignment given by said Houghton to said McClure? If yea, annex a copy. Was there any agreement as to the disposition of said notes; if yea, what was it? Annex a true copy of said note or notes.

SAMUEL PLATT,
By C. M. ELLIS, *his Sol.*

A.

Warranty deed.

Know all men by these presents, that I, Adam Hoyt, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in consideration of ten thousand dollars, to me paid by Samuel Platt, of Choconut township, county of Susquehanna, and State of Pennsylvania, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Platt, his heirs and assigns, a certain part or parcel of land, situated in that part of Cambridge called Cambridgeport, in the county of Middlesex, and Commonwealth of Massachusetts, bounded and described as follows, viz: southwesterly, on Canal street, one hundred and eighty-nine feet; southeasterly, on Mason street, one hundred and eighty-eight feet; northeasterly, on a fifteen-feet passage-way, two hundred and twenty-eight feet four inches, to Moore street; northwesterly, on lot No. 191, forty feet; northeasterly, on lot the same, forty-eight feet; northwesterly, on land now or late of Josiah Mason, one hundred feet, to Canal street; and all the privileges and appurtenances thereto belonging; it being the same property conveyed to me by deed dated fourteenth of May, 1846, from David M'Clure, and sold subject to two mortgages amounting to fifty-five hundred dollars, with the interest due thereon. To have and to hold the above granted premises, with the privileges and appurtenances

thereto belonging, to the said Samuel Platt, his heirs and assigns, to their use and behoof forever.

And I, the said Adam Hoyt, for myself and my heirs, executors, and administrators, do covenant with the said Platt, heirs, and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all incumbrances, except the two mortgages aforementioned; that I have a good right to sell and convey the same to the said Samuel Platt as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Samuel Platt, his heirs and assigns forever, against the lawful claims and demands of all persons, except aforementioned.

In witness whereof I, the said Adam Hoyt, and Susan E., wife of the said Adam, in relinquishment of her right of dower in the premises, have hereunto set our hands and seals, this fourteenth day of May, in the year of our Lord eighteen hundred and forty-six.

ADAM HOYT, [SEAL.]
SUSAN E. HOYT. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN DALLINGER, jr.

SUFFOLK, *ss:* *May* 14*th*, 1846.

Then personally appeared the above named Adam Hoyt, and acknowledged the above instrument to be his free act and deed; before me—

WM. E. PARMENTER,
Justice of the Peace.

Received and entered with Middlesex deeds, Lib. 483, fol. 303.
Attest: CALEB HAYDEN, *Reg.*

[For map, see original.]

B.—*Deed.*

Know all men by these presents, that I, Adam Hoyt, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, in consideration of three thousand dollars paid by David McLure, of Cambridge, in the county of Middlesex, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said McClure, his heirs and assigns, a certain part or parcel of land, situated in that part of Cambridge called Cambridgeport, in the county of Middlesex, and Commonwealth of Massachusetts, bounded and described as follows, viz: southwesterly on Canal street one hundred and eighty-nine feet, southeasterly on Mason street one hundred and eighty-eight feet, northeasterly on a fifteen feet passage-way two hundred and twenty-eight feet four inches to Moore street, northwesterly on lot No. 191 forty feet, northeasterly on the same lot forty-eight feet, northwesterly on land now or late of Josiah Mason one hundred feet to Canal street, and all the privileges and appurtenances thereto belonging, it being the same premises this day conveyed to me by David McClure, and subject to a mortgage, to William F. Richardson, for twenty-five hundred dollars, dated April 1, 1844.

To have and to hold the aforegranted premises, with the privileges, easements and appurtenances thereto belonging, to the said David McClure and his heirs and assigns, to their use forever.

And I, the said Adam Hoyt, for myself, and my heirs, executors, and administrators, do covenant with the said David McClure and his heirs and assigns, that I am lawfully seized in fee of the aforegranted premises; that they are free from all encumbrances except the aforementioned mortgage for twenty-five hundred dollars; that I have good right to sell and convey the same to the said David McClure, his heirs and assigns forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said David McClure, and his heirs and assigns forever, against the lawful claims and demands of all persons, except aforementioned.

Provided, nevertheless, that if the said Adam Hoyt, his heirs, executors, or administrators, shall pay unto the said David McClure, his heirs, executors, administrators, or assigns, the sum of three thousand dollars, in one year from the first day of May, 1846, with interest on said sum at the rate of six per centum per annum, payable semi-annually, and, until such payment, keep the buildings standing on the premises insured against fire in a sum not less than three thousand dollars, for the benefit of the said mortgagee, and his executors, administrators, and assigns, at such insurance office as he shall approve, then this deed, as also a certain promissory note, bearing even date with these presents, signed by the said Adam Hoyt, whereby he promises to pay to the said David McClure the said sum and interest at the time aforesaid, shall be absolutely void, to all intents and purposes.

But if default shall be made in the payment of the money abovementioned, or the interest that may grow due thereon, or of any part thereof, then it shall be lawful for the said David McClure, his executors, administrators, and assigns, to enter into and upon all and singular the premises hereby granted or intended to be granted, and to sell and dispose of the same, and all benefit and equity of redemption of the said Hoyt, the grantor, his heirs, executors, administrators, or assigns therein, at public auction; such sale to be upon the premises hereby granted, first giving notice of the time and place of sale, by posting up notifications thereof thirty days at least before the sale, in two public places in the town where said premises are situated, and publishing the same three weeks successively, in two weekly newspapers printed in the county of Middlesex aforesaid, and in his or their own name, or as the attorney of the said Hoyt, the grantor, for that purpose, by these presents duly authorized, constituted, and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple; and out of the money arising from such sale to retain the principal and interest which shall then remain of the moneys mentioned in the condition of this deed as aforesaid, together with the costs and charges of advertising and selling the same premises; rendering the overplus of the purchase money, if any there be, together with a true and particular account of such sales and charges, to the said Hoyt, the grantor, his heirs, executors, administrators, and assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and in equity, against the said Hoyt, the grantor, his heirs and assigns, and all other persons claiming or to claim the premises, or any part thereof, by, from, or under him, them, or any of them. And provided, also, that until default of or in the payment of the said sum of money, or of some part thereof, or of the interest therefor, contrary to the true intent and meaning of the preceding proviso, it shall and may be lawful to and for the said Hoyt, his heirs and assigns, peacefully and quietly to hold and enjoy all and singular the premises hereby granted, and to receive and take the rents and profits thereof to and for his own use and benefit, without the denial or interruption of or by the said McClure, or his assigns, or of or by any person or persons claiming by or under him or them.

In witness whereof, I, the said Adam Hoyt, and Susan E., wife of the said Adam, in relinquishment of her right of dower in the premises, have hereunto set our hands and seals, this fourteenth day of May, in the year of our Lord eighteen hundred and forty-six.

ADAM HOYT, [SEAL.]
SUSAN E. HOYT. [SEAL.]

Executed and delivered in the presence of—
JOSHUA DALLINGER, jr.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss:*

May 4, 1846.

Then personally appeared the above named Adam Hoyt, and acknowledged the foregoing instrument to be his free act and deed.

Before me, WM. E. PARMENTER,
Justice of the Peace.

MIDDLESEX, *ss:* *May* 15, 1846.
Received and recorded by
CALEB HAYDEN, *Reg.*

The foregoing is a true copy of record book 484, p. 301.
Pr. CALEB HAYDEN, *Reg.*

For assignment hereof to Amory Houghton, see book 493, page 87.
(Date of the assignment August 24th, 1846. Recorded Sept. 7, 1846.)
Attest: CALEB HAYDEN, *Reg.*

C.

MR. AMORY HOUGHTON. *May* 18, 1847.

SIR: Please render to me a correct account of the amount paid by you, and now due on the mortgage made by Adam Hoyt to David

McClure, May 14, 1846, and assigned by him to you, August 24, 1846, of land at Cambridgeport.

Yours, respectfully,
SAMUEL PLATT.
By his attorney, C. M. ELLIS,
21, *Old State House, Boston.*

D.

Mr. David McLure. *May* 20, 1847.

Sir: Seeing you have advertised to sell a mortgage made by Adam Hoyt to you, May 14, 1846, and by you assigned to Amory Houghton, August 24, 1846, I request to know by what right you now hold the same, and that you will render to me a correct account of the amount paid by you and now due thereon.

SAMUEL PLATT.
By his attorney, C. M. ELLIS.

A true copy of a notice given David McLure this day.

WINSLOW WRIGHT.

F.

Sale of real estate.

Will be sold by public auction, on Monday, the 21st day of June next, at 4 o'clock, P. M., on the premises, a certain parcel of land, with the buildings thereon, situated in that part of Cambridge called Cambridgeport, bound and described as follows, namely:

Southwesterly on Canal, now called Harvard street, one hundred and eighty-nine feet; southeasterly on Mason street, one hundred and eighty-eight feet; northeasterly on a fifteen feet passage-way, two hundred and twenty-eight feet and four inches, to Moor street; northwesterly on lot No. 191, forty feet; northeasterly on the same lot, forty-eight feet; northwesterly on land late of Josiah Mason, one hundred feet, to Canal, now called Harvard street, being the same premises which are described in the mortgage of Adam Hoyt to me, dated May 14, 1846, and recorded in Middlesex registry of deeds, book 484, page 301.

There are two double dwelling-houses on the above described premises, one of them nearly new. The location is good, being on Harvard street, which is the most direct avenue from Boston to Harvard College. The premises will be sold by me as mortgagee thereof, by virtue of a power of sale contained in said mortgage, and the conveyance will be made subject to a mortgage for twenty-five hundred dollars, with the interest thereon, to William F. Richardson.

DAVID McCLURE.
WM. HOVEY, Jr., *Auctioneer.*

Cambridgeport, *May* 19, 1847. 5w

United States of America,
Massachusetts district, circuit court.

The answer of David McClure to the bill of complaint of Samuel Platt, complainant, against the said McClure.

This respondent, saving and reserving to himself all and all manner of exception to the manifold errors and insufficiencies of said bill, for answer thereto, or to so much thereof as he is advised it is necessary or material for him to make answer to, says:

That he does not know, but that he has been informed and believes, that in the month of May, eighteen hundred and forty-six, the said Platt did bargain with John Dallinger, jr., (named in said bill,) for the purchase by the said Platt from the said Dallinger of a certain parcel of land, situate in Cambridge, bounded southwesterly on Harvard street, and southeasterly on Mason street, and being the same premises conveyed to this respondent by a deed from one Royal Richardson, hereinafter set forth. But whether, in said bargain, the said premises were pointed out or described by the said Dallinger as having the other boundaries in said bill mentioned or not, this respondent does not know, and has no information or belief, or means of knowledge or belief, (except from said bill,) and prays that, if the same be material, the said Platt may be compelled to prove the same.

And this respondent further answering says, that he does not know, and has no information, either from the said Dallinger, or from any other source, (except from said bill,) and he does not believe or admit that, at or before, or since the time of said bargain, the said Dallinger informed the said Platt, or in any way intentionally gave him to understand that both of the mortgages, subject to which the said Platt was to take the said premises, were in the usual form, or that they could not be foreclosed until three years after they should become due, or any thing to that or a similar effect, or with that or a similar meaning; and on the contrary he says, that to the best of his information, and means of information, and to his belief, the only representation which the said Dallinger ever made to the said Platt on the subject of said mortgages was that the premises would be subject to two mortgages, one for twenty-five hundred dollars, with back interest, and one for three thousand dollars, without any thing being said by either party as to the form of said mortgages.

And he further says, that whatever representations the said Dallinger may have made (if any) to the said Platt respecting said mortgages, or their form, they were not made with the knowledge, or assent, or privity, or on the authority of this respondent; that until a long time after the execution of the deed from Adam Hoyt to the said Platt, (mentioned in the said bill,) he had no knowledge, information, belief, or suspicion, that when the said Platt received said last mentioned deed he did not know that the mortgage given to this respondent by the said Hoyt contained the power of sale appearing on its face.

And he says, that he never combined or connived with the said Dallinger, or any one else, to defraud or injure, or deceive, or mislead the said Platt, or any one else, by inducing or procuring, or attempting to procure, him or them to take a conveyance of said premises, without a knowledge that the said mortgage deed contained said power of sale, or in any similar or other manner; and that he had no intention in having said power of sale inserted in said mortgage to injure, or defraud, or deceive, or mislead the said Platt, or any other person, in any manner.

And this respondent further answering says, that he does not know, and has no information, (except from said bill) whether the said Dallinger ever told the said Platt that the deed to him of said premises would be made by this respondent or not. But he says whatever representations (if any) were made by the said Dallinger to the said Platt, as to the person who would execute the deed to him, they were not made with the knowledge, or assent, or with the sanction of this respondent. And for a full statement of the circumstances attending the execution of his deed to said Hoyt, he refers to his statements hereinafter contained.

And this respondent further answering says, that he is informed and believes that the said complainant did, on or about the thirteenth day of said May, pay to the said Dallinger the consideration agreed upon for the price of said land; and that the said Dallinger agreed to deliver to Henry B. Stanton, esq., the attorney of the said complainant in that behalf appointed, a deed of said premises so bargained for in the usual form, and subject to two mortgages, amounting to the sum of fifty-five hundred dollars, and the interest thereon, and to no other incumbrances, as soon as said deed could be prepared. But this respondent has no information, except as stated in his answer to the complainant's ninth interrogatory, and does not believe, and therefore denies, that the said Dallinger agreed at that, or any other time, that the said two mortgages should be subject to the usual right of redemption during three years, or that the said Dallinger then or at any other time agreed that said deed should convey said premises subject to no other incumbrances, save two mortgages for the said amount, in the usual form, with the right of redemption during three years.

And this respondent further answering says, that he is informed and believes, that the deed so given to said complainant by the said Dallinger is obscure and incorrect in respect of the description; but this respondent is informed and believes, that the said obscurity and want of correctness are cleared up, rectified and cured, by a reference in said deed to preceding deeds, in which such obscurity and inaccuracy did not occur; and that the said description in the said deed to the complainant is in all respects like the description in the deed under which the grantor to said complainant held the said land, and in the deed under which this respondent held the same; and that the said obscurity and inaccuracy first occurred in the said deed under which this respondent held the said land, and were then the result of accident, and were copied into the succeeding deeds by mistake.

And this respondent further answering says, that he does not admit, and does not believe, but denies, that said description in said deed to said complainant does not embrace all that was agreed for by the said complainant.

This respondent admits that before the delivery of the deed aforesaid to said complainant, and on the same day, a mortgage, a copy whereof marked B, is annexed to the complainant's bill, was made of the premises embraced in the said deed to the said complainant, and that this respondent is about to sell said premises, under the power of sale in said mortgage, by auction.

This respondent further answering says, that on the fourteenth day of May, in the year eighteen hundred and forty-six, this respondent then having the legal title in said land, conveyed the same to one Adam Hoyt, as by this respondent's answer to the seventh interrogatory in said complainant's bill doth more fully appear. And this respondent says, that the said transfers were not made with a view to cover said Dallinger's property, but he says they were so made at the request of the said Dallinger, and that this respondent complied with said request, because it did not injure him, nor in any way impair his rights, and in connection herewith he refers to his answer to the said seventh interrogatory. And he denies having any intention to mislead, injure, or deceive the said Platt, or any one else, thereby, or any belief or suspicion that the said Platt, or any one else, could or would be injured, mislead, or deceived thereby in any manner.

And this respondent further answering says, that said Dallinger within two months thereafter did petition for the benefit of the Massachusetts insolvent laws.

This respondent further answering says, that Amory Houghton, of Cambridge aforesaid, on the twenty-fourth day of August, in the year eighteen hundred and forty-six, bought of this respondent his interest in said premises, to wit, the said mortgage thereon, and that the said transfer was made in good faith.

And this respondent further answering says, that he is informed and believes, that within four weeks before the eighteenth day of May, in the year eighteen hundred and forty-seven, the said complainant inquired of the said Houghton, who then owned the mortgage now held by this respondent, what amount was due on the same, and that the said Houghton then gave the said complainant a true statement thereof in writing.

And this respondent says, that he is informed and believes, that on the said eighteenth day of May the said complainant made a written demand, a copy whereof is annexed to said bill of complaint, and marked C, on the said Houghton for another statement of the same fact; but at the time said Houghton received said last demand he had already resold the said mortgage to this respondent, and had no interest in the premises.

And this respondent further answering says, that afterwards, to wit, on the twentieth day of the said May, this respondent received from the said complainant a written demand, a copy whereof is annexed to the said bill of complaint, and marked D, and that this respondent did not answer the same. And he says that he believes, and therefore avers, that at the time of said last demand the said Platt had in his possession the said true statement of what was due on said mortgage at the time said statement was made, and that until the said twentieth day of May, eighteen hundred and forty-seven, the said Platt was in the possession of all the said premises, and enjoying the rents and profits thereof, and well knew what was then due on said mortgage, according to its tenor, and had made the last payment thereon himself in the month of November last; and this respondent denies any right on the part of said Platt to inquire into or dispute the consideration or justness of the note, to secure which said mortgage was made, and says that he is advised, and therefore avers, that the said Platt is bound to pay or allow the same, according to its tenor, if he claims any interest or title under said deed from said Hoyt.

And this respondent further answering says, that the interest of said Platt will not be injured by a sale at the present, rather than at any other time, because he says that real estate in said Cambridge has a higher value at the present time than it has had for several years past, and will bring a larger price.

And this respondent further claims, that if the said Platt seeks to avoid said mortgage deed, he is bound to give up the title he has acquired under said deed from said Hoyt, and that he is not entitled to any relief until he offers so to do.

And this respondent further answering says, in answer to the first interrogatory in the complainant's bill of complaint contained, that on the eighteenth day of May, in the year eighteen hundred and forty-seven, at Cambridge aforesaid, in presence of H. M. Chamberlain, this respondent received from the said Houghton an assignment, whereof a copy marked A is hereto annexed, of the mortgage, whereof a copy marked B is annexed to the complainant's bill of complaint, and paid for the same in money nothing whatever, but gave his note for the same, as is hereinafter stated in answer to the complainant's thirteenth interrogatory.

And to the second interrogatory he answers, that he, the respondent, claims to be the owner of said mortgage under said assignment, a copy whereof is hereunto annexed as aforesaid, and he refers to his answer to the preceding interrogatory.

And to the third interrogatory he answers, that he did agree with said Houghton, in the month of August, in the year eighteen hundred and forty-six, for an assignment to the said Houghton of said mortgage; and that he did also agree with said Houghton for a reassignment of said mortgage to this respondent in the month of May, in the year eighteen hundred and forty-seven; and that he had no conversation with the said Dallinger relative to either of said assignments, except that, before said mortgage was first made to this respondent, the said Dallinger agreed to procure for this respondent a cash purchaser thereof within four months from its date; and just before the said sale thereof to the said Houghton the said Dallinger came to this respondent, and informed him that he had found a purchaser of said mortgage, to wit, said Houghton.

To the fourth interrogatory he answers, that he has had dealings with the said Dallinger within two years past. He has sold goods to the said Dallinger to the amount of eighteen dollars and thirty-one cents, a copy of his account whereof is hereto annexed, marked B; that he has kept no accounts and preserved no memoranda of any other of his dealings with him for two years last past, but that he has furnished him with money at various times to the amount of fourteen hundred and fifty dollars, and with lumber to the amount of two hundred and eighty-three dollars and eighty-five cents, as he is informed by Burrage & Gale, lumber dealers in said Cambridge, who delivered said lumber to said Dallinger on the order of this respondent. He also took an assignment of a lease from said Dallinger of a store in Boston, on which lease this respondent was holden to the lessor for the rent reserved in said lease.

To the fifth interrogatory he answers, that the complainant having discontinued as to Amory Houghton, the other respondent, he is advised that it is unnecessary and immaterial for him to answer said interrogatory.

To the sixth interrogatory he says, that he has not said in answer to the first interrogatory that he paid any money.

To the seventh interrogatory he answers, that in the spring of eighteen hundred and forty-four this respondent made a bargain with the said Dallinger for the purchase of the old house standing on said premises, described in the mortgage marked B, and a copy whereof is annexed to the complainant's bill, with the land under and around said house, being about four thousand and six hundred square feet, to which said Dallinger verbally agreed to give this respondent a good title. Relying upon the said agreement of said Dallinger, this respondent, soon after the making of said agreement, took possession of the premises so purchased by him, and commenced repairing and making alterations therein.

A short time afterwards, and while the respondent was making such repairs and alterations, said Dallinger informed him that there was a mortgage to one William F. Richardson on the whole of said premises described in said mortgage marked B, for twenty-five hundred dollars, and that he could not procure a release of said mortgage from that part of the premises which he had agreed to sell to this respondent, and could not give him a good title thereto; and he proposed to give to this respondent a deed of the whole of the premises described in said mortgage marked B, subject to said mortgage for twenty-five hundred dollars, in order to make him secure for the money which he had expended and was then expending upon said old house, with the verbal agreement and understanding that as soon as, and if, said mortgage for twenty-five hundred dollars should be discharged from that part of the premises which this respondent had agreed to purchase, this respondent should convey the other part of said premises to the said Dallinger, and not otherwise; to which proposition this respondent assented, and in pursuance thereof a deed of the whole of said premises was executed and delivered to said respondent by Royal Richardson, who then held the legal title; which deed was dated the third day of June, eighteen hundred and forty-four. In the spring of eighteen hundred and forty-five, this respondent had a conversation with said Dallinger in relation to said mortgage for twenty-five hundred dollars, in which he told said Dallinger that he did not like to have the said mortgage remain as it was;

and said Dallinger proposed to build a double dwelling-house upon the other part of the premises, provided this respondent would assist him by furnishing a part of the means for the erection of said dwelling-house; giving as a reason for so doing that the value of the estate would be so much increased thereby that he should find less difficulty in procuring a release of said mortgage from that part of the premises which this respondent had agreed to purchase. Moved by this argument, and by his regard for the said Dallinger, who is nearly connected with him by marriage, this respondent assented to said proposition, and the said Dallinger soon commenced the erection of said double dwelling-house; and during the year eighteen hundred and forty-five, and the early part of the year eighteen hundred and forty-six, this respondent furnished said Dallinger with fourteen hundred and fifty dollars in money as aforesaid, and with two hundred and eighty-three dollars and eighty-five cents in lumber as aforesaid, to aid him in the erection of said dwelling-house, which was erected accordingly. On the fourteenth day of May, eighteen hundred and forty-six, the said Dallinger had in equity and good conscience such an interest in the premises described in the mortgage marked B as results from the foregoing statement of facts, and from the understanding between the parties, that when, and if said Dallinger should pay said mortgage for twenty-five hundred dollars, and also should pay to this respondent the amount furnished the said Dallinger as above stated, the said Dallinger should have a quit claim deed of all the premises described in said mortgage marked B, except that part thereof which was agreed to be purchased by this respondent as aforesaid. In the month of April, or the early part of May, eighteen hundred and forty-six, said Dallinger called at the house of this respondent, and told him that he had an opportunity to sell the whole of said premises described in said mortgage marked B, if he could bargain with this respondent for his interest in the same. This respondent told said Dallinger that he would sell his interest in said premises for a fair price, if he could have the money. Said Dallinger replied that he could not get any money then, but that he could sell the estate subject to the mortgage for twenty-five hundred dollars to Richardson, and to another mortgage for three thousand dollars, to this respondent. This respondent refused to accede to said proposition unless said Dallinger would agree to find a cash purchaser for said mortgage of three thousand dollars within four months, which the said Dallinger agreed to do. On the fourteenth day of May, eighteen hundred and forty-six, at the request of said Dallinger, this respondent executed and delivered to one Adam Hoyt a deed with warranty, subject only to said mortgage for twenty-five hundred dollars, of the premises described in said mortgage marked B, and on the same day said Hoyt executed and delivered to this respondent the mortgage, a copy whereof is annexed to the complainant's bill, and marked B.

To the eighth interrogatory he answers, that he has been informed and believes, that said Dallinger, at or about the time of the transfer to said complainant of the premises described in the mortgage marked B, was paid by said complainant an amount which is unknown to this respondent in stock, in a certain unincorporated joint stock company for mining copper in Pennsylvania; and this respondent has no knowledge, information, or belief, that said Dallinger was paid, or agreed to be paid, or understood to be paid, either to him or to any other person for him, or reckoned in his accounts, any money on any of the transfers of said property.

To the ninth interrogatory he answers, that Samuel Platt, the complainant, has within one year past complained to and informed this respondent that he, the said Platt, was led to take his deed aforesaid in the belief and assurance that he had three years right of redemption under the said mortgages, and this statement he made to this respondent some time in the latter part of the year eighteen hundred and forty-six, the precise time this respondent does not remember, and therefore cannot state.

To the tenth interrogatory he answers, that he has no agreement with any person as to the selling of the premises described in the mortgage annexed to the complainant's bill and marked B, nor as to the disposition of the proceeds thereof.

To the twelfth interrogatory he answers, that he gave instructions to his attorney to proceed with the sale of the premises according to the power contained in said mortgage, a copy of which is annexed to the complainant's bill and marked B, but that he did not give any specific instructions in relation thereto, leaving it entirely to his said attorney, and that he did not specifically direct said advertisement.

To the thirteenth interrogatory he answers, that a reassignment of said mortgage was made from said Houghton to this respondent, as aforesaid in answer to the first interrogatory; that said reassignment was made on the eighteenth day of May, 1847, and bears date on the same day, a copy whereof is hereto annexed as aforesaid; that the consideration therefor was three thousand and ninety dollars, which was paid by the promissory note of this respondent, dated on said eighteenth day of May, for the same sum, payable to said Houghton, on demand, with interest; and the said Houghton, so far as this respondent is informed or believes, held said note on the twentieth day of said May, and still holds the same. No other writing besides said assignment was given by said Houghton to this respondent, nor was there any agreement as to the disposition of the said note; and this respondent not having kept a copy of said note, is unable to annex any such copy hereto.

And this respondent denies all and all manner of unlawful combination and confederacy, wherewith he is by the said bill charged, and without this, if there is any other matter, cause, or thing in the said complainant's said bill of complaint contained, material or necessary for this respondent to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, avoided, or denied, is true to the knowledge or belief of this respondent; all which matters and things this respondent is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

DAVID McCLURE.
H. M. CHAMBERLAIN,
Solicitor.

BOSTON, *June* 5, 1847.

Personally appeared the above named David McClure, and made oath to the truth of so much of the above answer as is stated as of his own knowledge, and that the matters which are therein stated as of belief, opinion, or hearsay, are verily believed by him to be true.

Before me, GEO. S. HILLARD,
Commissioner.

A.

Know all men by these presents, that I, Amory Houghton, the assignee of the within written mortgage, in consideration of three thousand and ninety dollars, to me paid by David McClure, of Cambridge, the within named mortgagee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, and set over, and by these presents do grant, bargain, sell, assign, and set over, unto the said David McClure, his heirs and assigns, the within deed of mortgage, and all my right and title to the premises therein mentioned and described, together with the rights and appurtenances thereto belonging. To have and to hold all and singular the premises hereby granted and assigned, or mentioned, or intended so to be, unto the said David McClure, his heirs and assigns, forever; subject, nevertheless, to the right and equity of redemption of the within-named Adam Hoyt, his heirs and assigns in the same.

In witness whereof, I have hereto set my hand and seal, this eighteenth day of May, in the year of our Lord eighteen hundred and forty-seven.

AMORY HOUGHTON. [SEAL.]

Signed, sealed, and delivered in presence of—
M. M. CHAMBERLAIN.

MIDDLESEX, *ss:* *May* 18*th*, 1847.

Personally appeared the above named Amory Houghton, and acknowledged the above instrument, by him subscribed, to be his free act and deed. Before me,

H. M. CHAMBERLAIN,
Justice of the Peace.

CAMBRIDGE, *May* 20*th*, 1847.

Received and recorded with Middlesex deeds, book 500, page 518.
Pr. CALEB HAYDEN, *Reg*.

B.

CAMBRIDGE, *April* 7, 1846.

Mr. John Dallinger, jr., to D. McClure, Dr.

	For 8 gallons linseed oil	80	$6 40
	2½ " spts.	80	2 00
	1 qt. varnish		50
	2 gals. spts.		1 60
	4 " oil		3 20
May 9.	2 " spt.		1 40
	4 " oil		3 21
			$18 31

Replication of Platt to McClure.

C. C. U. S. A., Mass. dist., May T., 1847.

PLATT
vs.
McCLURE.

The replication of said Platt, complainant, to the answer of said McClure, the respondent, to the said complainant's bill of complaint.

This repliant, saving and reserving to himself any and all manner of advantage of exceptions to the manifest insufficiencies of the said answer, for replication thereunto says, that he will aver and prove his said bill to be true, certain, and sufficient in law to be answered unto, and that the said answer of the respondent is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is, and will be, ready to aver and prove as this honorable court shall direct, and prays, as in and by his bill he has already prayed,

By his solicitor, C. M. ELLIS.

UNITED STATES OF AMERICA,
Massachusetts district, ss:

[L. S.] The circuit court of the United States, within and for the Massachusetts district.

To George S. Hilliard, Charles Sumner, Edward G. Loring, George T. Curtis, W. W. Story, Charles L. Woodbury, Benjamin F. Hallett—all of Boston, in said district, esquires, or to either of them.

Know ye, that, reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories to be propounded to the witnesses to be brought before you, and to be examined on behalf of either party, and to be used in a certain cause now pending in said court, to wit, Samuel Platt, plaintiff in equity, versus Amory Houghton and al., defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced, to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission, and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this twenty-seventh day of July, in the year of our Lord one thousand eight hundred and forty-seven. JAS. B. ROBB, *Clerk*.

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

Aug. 11, 1847.—The execution of this commission appears by the schedules annexed and my return—the said Brastow and Houghton being the only witnesses adduced before me.

EWD. G. LORING, *Commissioner*.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

SAMUEL PLATT, complainant,
vs. } In equity.
DAVID McCLURE, respondent.

Interrogatories proposed by and on behalf of Samuel Platt, the complainant in the above entitled cause, to George Barstow, of Cambridge, in the State of Massachusetts, to be answered by him under oath.

1. What is your age and occupation?
2. Do you know the said complainant and the respondent in this suit; did you know them in May, 1846?
3. Whether or not, in May, 1846, and before the 14th of said May,

67.

were you, at any time, present when the complainant, said Platt, and John Dallinger, jr., of Cambridge, had any conversation about the sale or conveyance from said Dallinger, jr., or any other person for him, of a certain house and land in Cambridge, belonging to said Dallinger, called the Messenger Place; if yea, where and when was it; who was present? State all that was said.

4. Whether or not did said Dallinger say any thing of any mortgages then upon said place; if yea, what did he say about them?

5. Whether or not did said Dallinger say any thing of a power of sale in any mortgage on said place?

6. Whether or not was any thing said as to the person from whom the deed of said place would come to said Platt; if yea, what; from whom was it stated the deed was to come?

7. Whether or not was any thing said by said Platt or said Dallinger as to any time for redemption which there would be under the mortgages on said place? If yea, state all that was said relative thereto.

8. Whether or not did you have any conversation with said McClure, the respondent, at or about that time, relative to any mortgage held by him on said premises; if yea, what was said thereat?

9. Whether or not are said Dallinger and said McClure related; if so, how?

10. In May, 1846, where did said Dallinger and said McClure live; how near to each other; how often did they visit or see each other; how long had said McClure lived where he then lived?

11. Whether or not, August 24, 1846, or thereabouts, did said McClure receive of Amory Houghton any money for a mortgage he held on said place; if yea, how much?

12. Whether or not was any of said money ever received by John Dallinger, jr., either of said McClure or said Houghton; if yea, when, of whom, and what amount?

13. Whether or not did said Dallinger and said Platt, in May, 1846, go over the land agreed by said Dallinger to be conveyed to said Platt, and was the same pointed out by said Dallinger to said Platt?

14. Please look at the sketch annexed hereto, representing the Messenger Place, so called, and state whether or not the portion of land represented by the part surrounded by red lines was pointed out by said Dallinger to said Platt as part of that which was to be conveyed to said Platt.

15. Whether or not did said Dallinger point out any, and if any, what land or lots or buildings as what was to be conveyed to said Platt? If you cannot describe the same upon or by aid of the annexed sketch, please do so in your own way, to the best of your power.

16. Whether or not, on May 14, 1846, had John Dallinger, jr., any interest in the Messenger Place, so called; if so, what was it?

17. Whether or not have you not heard David McClure, the respondent, speak both before and since May 14th, 1846, of the interest of said Dallinger, jr., in said place?

18. Whether or not, in the spring or summer of 1846, did you learn

of the failure of John Dallinger, jr.; when did you first learn of his failure, and from whom?

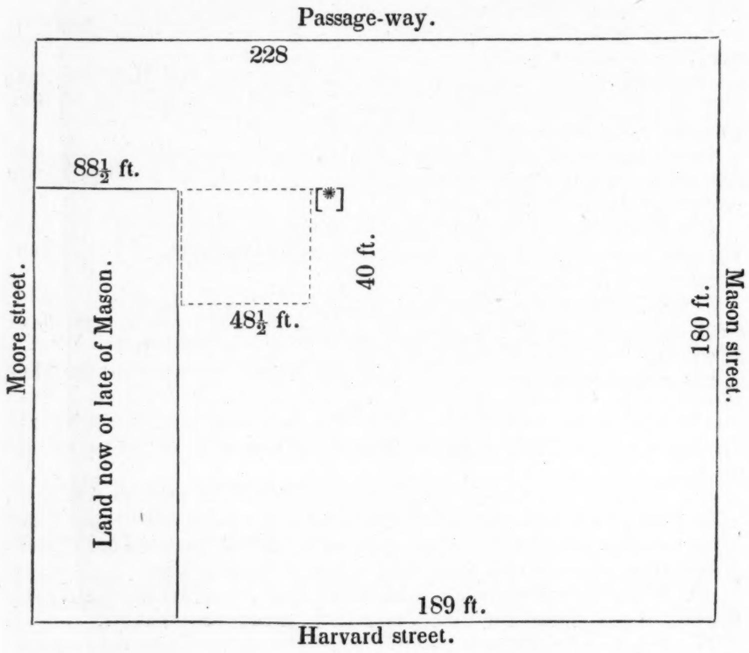
19. Whether or not did you ever, prior to May 14, 1846, and in that year, hear David McClure, the respondent, discussing the state of said Dallinger's affairs; if yea, when, and with whom?

20. Whether or not have you not heard McClure, the respondent, say that he knew what was ahead, and contrived to secure himself; and that Amory Houghton, too, had got something for his debt, or words to that effect?

21. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

SAMUEL PLATT, *Complainant*.
By his att'y, C. M. ELLIS.

Sketch to be annexed to interrogatories to Geo. O. Brastow.



[* The red lines in the original are here represented by dotted lines.]

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

SAMUEL PLATT
vs. } In equity.
DAVID MCCLURE.

Cross interrogatories proposed by and in behalf of the respondent to George Brastow, to be answered by him under oath.

The respondent excepts and objects to the third, thirteenth, fourteenth, seventeenth, and twentieth interrogatories, as leading.

1. If, in answer to the eighth interrogatory, you have said that you had conversation with said McClure relative to any mortgage held by him on the premises in question, state whether it was before or after the 14th of May, 1846, and fix the precise date if possible.

2. If, in answer to the eleventh interrogatory, you have said that said McClure did, or that he did not, receive of Amory Houghton any money for said mortgage, state your means of information; and if you have said how much, state your means of information.

3. If you have answered affirmatively to the seventeenth interrogatory, state in how many conversations you have heard said McClure speak of said Dallinger's interest in said place; when and where, and in whose presence; give the words that he used, and all that he said.

4. Have you since May 14, 1846, been at the said Messenger Place with said Platt and McClure?

5. If you have answered yea to the fourth cross interrogatory, how many times were you at said place with said Platt and said McClure, and when was any other person present, and who?

6. If, in answer to the sixteenth interrogatory, you have said that John Dallinger, jr., had any interest in said Messenger Place May 14, 1846, state your means of information on that point.

7. Have you not stated to some person or persons, and if so, to whom, that you blamed said Dallinger for only one thing, and that was for not informing said Platt what kind of a mortgage that to said McClure was, or words to that effect?

H. M. CHAMBERLAIN, *for the respondent.*

Deposition of Geo. O. Brastow.

Answers of said Brastow to the interrogatories to him proposed.

1. I am thirty-five, and am dealer in real estate.

2. I know both now; I knew only Samuel Platt May, 1846.

3. Some time in May, I think in the early part of May, but I can't fix the time, I introduced the parties referred to—this was before the sale of the Messenger Place, and was in reference to some trade in real estate; I first saw the parties at Dallinger's house; no one else was present; I was there at Mr. Platt's request to give my views of the value of the property; the conversation was in substance that Mr. Dallinger would sell the Messenger estate to Mr. Platt for $10,000, (ten thousand

dollars in copper stocks,) subject to mortgages, one for $2,500, and 2 years' interest about, and one of three thousand dollars; and Mr. Dallinger was to take more stock and pay some money.

4. Only what I have above stated; something was said about their duration, and my recollection is, that they were to become due in about a year; but no definite time was fixed, and I understood the arrangement was, that Mr. Platt should go to Mr. Dallinger's office and see plans, &c., and I left them; and something was said about the redemption, and it was expressed or assented to by Mr. Dallinger that on our mortgages there were three years' redemption.

5. Nothing.

6. Nothing.

7. Nothing as to these particular mortgages; it was said or assented to by Dallinger that mortgages in Massachusetts had three years' redemption.

8. Some time after that above referred to Mr. Platt called on me to go and see about the line, and McClure with him, and I went. Mr. Platt told me Mr. McClure had this $3,000 mortgage; Mr. McClure said in substance that he held the mortgage and expected his money, and said he did not wish to part with the land unless he got the money in a year, as he wanted it; our business was altogether on another matter; Mr. McClure said he did not want to part with his land except for money down, as he wanted it within a year.

9. I don't know.

10. Dallinger lived on Broadway in Cambridgeport; and I know Mr. McClure lived within three quarters of a mile; of the rest of the question I know nothing.

11. I know nothing of it personally.

12. I know nothing about it.

13. We all went over the land proposed to be traded; the land was fenced, and I asked Mr. Dallinger if the fences stood on the line, and he said they did, or about that; that it was the piece of land fenced in; and that he had a plan which would show the boundaries and the number of feet also, which he did not then recollect; which plan he'd then at his office, &c.

14. Yes, as much as any was; it laid there and was shown to us as the Messenger estate, or a part of it.

15. I can only say he pointed out the lands and buildings in the fence; in my presence he reserved nothing, neither did he definitely fix any thing by feet or boundaries.

16. I know nothing about it.

17. I have heard Mr. McClure say to Col. Platt that he was willing to convey to Dallinger if he could receive his $3,000, and Dallinger's interest was all over that.

18. I learned it in the summer of 1846, that John Dallinger had gone into insolvency; from whom I can't say.

19. Never.

20. Never.

21. I know nothing.

69.

Answers of said Brastow to the cross interrogatories.

1. It was several weeks after the trade and the 14 May.
2. I have said I know nothing.
3. I never saw Mr. McClure but once; then he said what I have stated as to Dallinger's interest, and I don't remember that he said any thing more.
4. Yes.
5. I never was there but that once, and no other person was present.
6. I answered that I know nothing.
7. I think I have in substance, or nearly so.

GEORGE O. BRASTOW.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

SAMUEL PLATT,
vs. } In equity.
DAVID McCLURE.

Interrogatories proposed by and on behalf of said Platt, the complainant, to Amory Houghton, of Cambridge, in the county of Middlesex, trader, to be answered by him under oath.

1. Do you know said McClure and John Dallinger, jr., of Cambridge?
2. Whether or not are they connected and how, if at all? Where did they reside in May, 1846? Whether or not did they then visit and see each other frequently, and how often?
3. Whether or not did said Dallinger fail in business in the summer or spring of 1846; if yea, when?
4. Whether or not had you had dealings with said Dallinger previous to his said failure, and to what amount?
5. Whether or not was said Dallinger owing you at the time of his said failure; if yea, what amount; if not, how had you been paid?
6. Whether or not did you prove any claim against said Dallinger's estate; if yea, what amount? Have you any other claim on it?
7. Whether or not have you received pay or security for all or any part of the debt due you from said Dallinger at the time of his said failure; if yea, what, when, and to what amount?
8. Whether or not in May, 1846, or August, 1846, did said Dallinger owe you; if yea, for what, and to what amount?
9. Whether or not in May, 1846, or August, 1846, did David McClure owe you; if yea, for what, and what amount?
10. Whether or not in August, 1846, did you take from said McClure an assignment of a mortgage made to him by Adam Hoyt, dated May 14, 1846?
11. Whether or not did you pay to said McClure, or to any other and what person, any and how much money for said mortgage?
12. Whether or not was the balance for said mortgage paid; if yea, when, to whom, and in what manner? State fully.

13. Whether or not did you bargain with John Dallinger, jr., for said mortgage?

14. Whether or not did you have any conversation with John Dallinger, jr., or David McClure, prior to the time when said mortgage was given, about said mortgage, and were they together at the time?

15. Whether or not did you have any conversation with said McClure relative to said mortgage before you took it; if yea, what was it?

16. Whether or not did said McClure say why he had a power of sale inserted in said mortgage; if yea, what was the reason he gave?

17. When did you first know of said power of sale?

18. Who first informed you of said power of sale?

19. If in answer to the 13th interrogatory you state that you bargained with said Dallinger for said mortgage, state on what terms.

20. Annex a true copy of your accounts with David McClure for the last two years.

21. Whether or not does said account exhibit all your transactions with said McClure; if not, in what particulars?

22. Whether or not have you heard McClure, within one year last past, speak of the place mortgaged as Dallinger's place? Whether or not have you heard him so speak for two years?

23. By whom has said place been occupied for the past four years?

24. Whether or not is said place known as the Messenger place?

25. Whether or not did John Dallinger build a new house on it; if yea, when was it begun and when done?

26. Whether or not have you heard David McClure speak of the interest of said Dallinger in said mortgage?

27. Whether or not have you not heard David McClure, the respondent, say that he did not suppose that Samuel Platt, the complainant, knew there was any power of sale in said mortgage, and that he knew that said Platt went home the day before the mortgage was made?

28. Whether or not did said McClure not say in your presence and hearing that said Dallinger desired him to take a common mortgage, but that he, said McClure, insisted on having one with power of sale?

29. Whether or not have you reassigned to David McClure the mortgage assigned by him to you August 24, 1846?

30. Whether or not, on or about May 18th, did you receive from the complainant, Platt, a notice relative to said mortgage; at what hour of the day?

31. Whether or not did you show, or speak of, the same to David McClure, the respondent, or to John Dallinger, jr., and when?

32. When was said reassignment executed; at what hour of the day; where; and in whose presence? State all the persons who were present when it was executed, and when it was talked of or agreed upon.

33. Whether or not was said reassignment executed as soon as it was drawn, or was it dated back; and if so, why was it dated back?

34. On the 18th of May, 1847, how did the account between you and David McClure stand?

35. Whether or not did you have any conversation with John Dallinger, jr., relative to said reassignment?

36. If you answer yea to the 35th interrogatory, when and where did you have such conversation; who was present?

37. Who first proposed to have a reassignment made of said mortgage?

38. Do you know the cost of the double new house that was erected by John Dallinger, jr., upon the Messenger Place; if yea, what was the cost thereof; if nay, what would it cost to build such a house?

39. Whether or not do you know the value of land at Cambridgeport? What is the worth of it, and the price it sells for per foot, upon the main street, in the immediate vicinity of the said place, known as the Messenger Place?

40. Whether or not have lands risen in value in said Cambridge recently, and are they or not constantly increasing in value there?

41. How long have you resided in Cambridge, and what has been your business during that time?

42. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

SAMUEL PLATT, *Compt.*
By his attorney, C. M. ELLIS.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

SAMUEL PLATT
vs. } In equity.
DAVID McCLURE.

Cross interrogatories proposed by and in behalf of the respondent to Amory Houghton, to be answered by him under oath.

The respondent excepts and objects to the sixth, seventh, eighth, and fourteenth interrogatories proposed by the complainant, as irrelevant; and to the twenty-second, twenty-seventh, twenty-eighth, and fortieth, as leading.

1st. If, in answer to the complainant's twenty-sixth interrogatory, you have said that you have heard David McClure, the respondent, speak of the interest of said Dallinger in said mortgage, state what you have heard said McClure say on that subject.

2d. If, in answer to the thirty-seventh interrogatory, you have said, that you first proposed a reassignment of said mortgage, state your reason for making that proposal.

3d. If, in answer to the thirty-ninth interrogatory, you have said, that you are acquainted with the value of land at Cambridgeport, state whether the value of land in the main street, in the immediate vicinity of the said Messenger Place, is or is not any indication of its value on Harvard street.

4th. On which of the two streets last above named is land cheapest;

and how great is the average difference between lands on those respective streets?

5th. Is there any manufactory, or any nuisance of any kind, in the immediate neighborhood of said Messenger Place, which injures the value thereof; if any, how many and how near are they; what is their nature, and what, and how much, effect have they on the price at which said land could be sold?

6th. Do lands in Cambridgeport constantly increase in value, without any fall; or are they subject to fluctuations in price?

7th. Are lands, or are they not, unusually high at said Cambridgeport at the present time?

8th. Has the complainant said to you, since May 14th, 1846, that said Dallinger did or did not tell him of the power of sale in said mortgage?

9th. Did said complainant then say whether it would or would not make any difference to him? State fully and particularly what he said, if any thing, on that subject.

11th. Who first exhibited to you the said mortgage which you purchased of said McClure?

H. M. CHAMBERLAIN,
For the respondent.

Answers of said Amory Houghton to the interrogatories prefixed, and to him addressed.

1. I know said McClure and Dallinger.

2. They married sisters; they have resided in Cambridgeport for several years—Mr. McClure in Washington street and Mr. Dallinger, and they so resided in May, 1846; as to their visiting and seeing each other I have no personal knowledge; their houses were from ½ to ¾ of a mile apart, and that is all.

3. I believe he went into chancery in the spring of 1846.

4. I had dealings with him, to what amount I can't say; I had had dealings with him for many years previous to his failure; he owed me over 400 when he failed.

5. He owed me about $400. I think between four or five hundred dollars.

6. I proved none; I held collateral security and notes—the notes I hold now, and the security also; but I understand Dallinger is discharged.

7. The debt was for money lent to Dallinger, and at the time of the loan I took security in notes endorsed by Dallinger; I supposed it good security at the time—part proved good and a part was bad; the debt when contracted was larger than at Dallinger's failure, as a part had been paid by the security in cash received from it; about (200) two hundred dollars had been so paid; I have received no other payment, and hold of the security (8 or 900) eight or nine hundred dollars in amount—but I consider it worthless.

8. I have already answered as fully as I can.

9. He did not owe me.
10. Yes, sir.
11. I paid David McClure about twenty-three hundred dollars in money.
12. No more was ever paid.
13. I did not—but with McClure; Dallinger told me of it.
14. I knew nothing of the mortgage till Dallinger spoke to me about it; this was after it was given, and shortly before it was transferred to me; Dallinger told me McClure had such a mortgage, and he wanted me to buy it, and I traded with McClure for it at my counting room. I never saw McClure and Dallinger together about it; a short time after Mr. Dallinger spoke to me about it, Mr. McClure called over to my place.
15. I had a conversation with McClure previous to buying the mortgage, in which the bargain between us was made; it related only to the traffic for the price, so far as I recollect, and I can't now state it more particularly.
16. I don't recollect that M'Clure said any thing about the power of sale.
17. When Dallinger mentioned it, he told me of the power of sale, and he said if the money were not paid I could sell.
18. Dallinger.
19. I stated I did not.
20. They are annexed, marked A.
21. It exhibits all.
22. No, sir; never.
23. I don't know who has occupied it at all.
24. It is so known.
25. A house was built there, and Dallinger had something to do with it—how much I don't know; I think it had been done about two years, and that they were about a year about it.
26. I have heard McClure say Dallinger had no interest in the mortgage.
27. I have not.
28. No, sir, not that I recollect.
29. I have.
30. I did—I think at about (9) nine o'clock in the evening; I then found it at my house on my return from my business.
31. I rather think I spoke to M'Clure about it several days after its receipt. I had assigned the mortgage before I received the notice; I don't recollect ever mentioning it to Dallinger.
32. It was first talked about the same morning or the morning before it was assigned, between me and M'Clure, and in the presence of H. M. Chamberlain. When the assignment was executed, Mr. Jacobs, Mr. Chamberlain's partner, was also with us; it was made in the morning at Chamberlain and Jacobs' office. The date I don't remember, as to the day of the month or week.
33. It was executed as soon as drawn, and not dated back.

34. This appears by the accounts.
35. No, sir; none.
36. I answered: "Nay."
37. I believe I did.
38. I don't [know] what that did cost; I should think such a house would cost (2,000) two thousand dollars.
39. I am somewhat acquainted with the value of land in Cambridgeport, and think that specified worth twenty-five cents on the average, on the main street, after passing the marsh.
40. Land rose there last year considerably, and now it stands where it did six months since; but within three years it has nearly doubled.
41. I have lived there about fifteen years; I worked as a carpenter about five years, and since have kept a coal and wood wharf.
42. I know nothing.

Answers of said deponent to the cross interrogatories to him addressed.

1. I did not; have heard only what I have stated—that Mr. Dallinger had no interest.
2. My reason was, that I doubted if the power of attorney could be transferred; I took legal advice on it.
3. It would be some indication; the land on the Main street is higher than land on Harvard street, and worth double.
4. It is cheaper on Harvard street by half.
5. There are three soap manufactories within forty feet, which, I think, reduced the value of the land some, but how much I can't say; it might [be] ten per cent.
6. I think them subject to fluctuation.
7. Yes, they are.
8. Mr. Platt, at the time he paid me the interest, said that Mr. Dallinger said nothing to him about the power of sale, and I think he used the expression he was deceived.
9. I believe Mr. Platt said it wouldn't make any difference, as it would be paid when due.
11. Mr. M'Clure.

AMORY HOUGHTON.

U. S. A., first circuit, district of Massachusetts.

This eleventh day of August, A. D. eighteen hundred and forty-seven, personally appeared before me the above named Brastow and Houghton, and being severally sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which their depositions were taken, were severally examined apart, each on the interrogatories and cross interrogatories to him addressed, and the answers of each written down by me in his presence; after being carefully read over to him by me, were by him subscribed as and for his deposition. Taken by virtue of the commission hereto prefixed, to be used in the suit therein named.

EDW'D G. LORING,
Commissioner.

Fee, $11.00.

UNITED STATES OF AMERICA,
[L. S.] *Massachusetts district, ss.*

The circuit court of the United States, within and for the Massachusetts district, to George S. Hillard, Charles Sumner, Edward G. Loring, George T. Curtis, W. W. Story, Charles L. Woodbury, B. F. Hallett, all of Boston, esquires, or to either of them.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories to be propounded to the witnesses to be brought before you, and to be examined on behalf of either party, and to be used in a certain cause now pending in said court—Samuel Platt, plaintiff in equity, versus Amory Houghton and al., defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses, as aforesaid, to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises; and, when you shall have taken the examination as aforesaid, to reduce or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence; and the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney at Boston, this fifteenth day of September, in the year of our Lord one thousand eight hundred and forty-seven. JAS. B. ROBB, *Clerk*.

N. B. You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions to writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponents to each, fully and clearly.

October 1, 1847. The execution of this commission appears by the schedules hereto annexed. EDW'D G. LORING, *Com'r*.

Fee. Commission 9, witness 1, do. 1, do. 1=12.

N. B. Deposition to be taken on paper corresponding in size with this commission.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss.

PLATT
vs.
McCLURE. } In equity.

Interrogatories to be proposed to Henry B. Stanton, esq., a witness to be examined on the part of the complainant.

1. What is your age, residence, and occupation?

2. Do you know the parties to this suit, and John Dallinger, jr., of Cambridge, or either, and which of them; how long have you known them?

3. Whether or not, prior to May 14, 1846, had you been counsel for the respt. McClure, or said Dallinger, and were you then the counsel of either of them?

4. Whether or not, on or about May 13th, 1846, or at any time prior to May 14th, 1846, did you hear any conversation between said Platt and said McClure, or between said Platt and said Dallinger, relative to the purchase of lands at Cambridgeport by said Platt of said Dallinger or McClure; if yea, when and where was it? Will you please state particularly all that was said at each and every such conversation; what persons were present at the said conversations?

5. If in any such conversation said Dallinger or said McClure, or any one else, in their presence, said any thing to said Platt about any mortgages on the property at Cambridgeport, state particularly what was said and by whom it was said. Whether or not, in said conversations, was any thing, and, if any thing, what was, said about any time of redemption on said mortgages or either of them?

6. Whether or not were you, on or about May 13, 1846, and at what time, present at any settlement made between said Platt and said Dallinger or McClure, for said lands?

7. Whether or not did said Platt and Dallinger make any arrangement as to the delivery of the deed of said premises; if yea, what was it?

8. Whether or not did you, on or about May 14th, 1846, see a certain deed from Adam Hoyt to said Platt, dated May 14th, 1846; if yea, when and where; what was done with it; was it ever delivered or recorded; if yea, to whom was it delivered; where was said Platt at the time?

9. Who are the assignees of said Dallinger in insolvency?

10. Where are the schedules of said Dallinger, filed in insolvency? If you have or can procure them, will you please annex to your answer, copies of all parts of his schedule of assets that relate to any property at Cambridge, Massachusetts? [Objected to, G. M.]

11. Whether or not did you ever see any schedule of the assets of said Dallinger; if yea, when and where, and in whose possession? Whether or not have you made any, and what, search and inquiry for

said schedule, and if not, will you please make diligent search therefor before completing your answer hereto, and state whether you can find the same or not? [Objected to, G. M.]

12. Whether or not was there any thing on said schedule relative to said property at Cambridgeport, or relative to any, and, if any, what property, there? Will you state all you recollect concerning the same? [Objected to, G. M.]

13. Whether or not does the estate of said Dallinger pay any thing, or is there any property to be divided? If yea, what? [Objected to, G. M.]

14. If in answer to interrog. No. 6, you state that you did know of any settlement therein inquired of, you will please state whether any notes were given in said settlement; if yea, by and to whom; whether or not were the same paid when due, or have they been paid since?

15. Whether or not, at any of the conversations inquired of in interrog. No. 4, was your opinion asked, or did you state any thing relative to the time of redemption of mortgages; if yea, what did you state relative thereto?

16. Whether or not did said Dallinger or said McClure, before or on May 14, 1846, make any statements or representations to you, or in your presence, as to the ownership of the property before inquired of and embraced in the mortgage in controversy between the parties to this suit; if yea, what did they, or either of them say, relative thereto?

17. If, in answer to the 6th and 7th interrogatories, you state that you were present at any settlement between the parties therein inquired of, and that an arrangement was made about the delivery of a deed, will you please state particularly what part said McClure and said Dallinger respectively took therein, and what was done by each of them about these matters?

18. Do you know, or can you set forth, any other matter or thing which may be a benefit to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

C. M. ELLIS, *Solr. for Compt.*

The deft. waives any cross interrogatories to these witnesses.

GEORGE MINOT,
Dft's Solicitor.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

PLATT
vs.
MCCLURE.
} In equity.

Interrogatories to be propounded to William E. Parmenter, esq., a witness to be examined on behalf of the complainant.

1. What is your age, residence, and business?

2. Do you know John Dallinger, jr., of Cambridge, Mass.?

3. Do you know who are the assignees of his estate in insolvency; if yea, who are they?

4. Whether or not have you ever seen any schedule of assets filed by said Dallinger in insolvency; if yea, when, where, in whose possession; whether or not have you made any, and if any, what inquiries for it; where is it now? [Objected to, G. M.]

5. Whether or not was any real estate at Cambridge mentioned in said schedule; if yea, what was it and what was stated respecting it? [Objected to, G. M.]

6. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

C. M. ELLIS, *Solr. for compt.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

PLATT
vs. } In equity.
McCLURE.

Interrogatories to be proposed to G. Washington Warren, esq., a witness to be examined on the part of the complainant.

1. What is your age, residence, and occupation?

2. Whether or not did John Dallinger, jr., at any time in the year 1846, petition before you, acting as master in chancery, for the benefit of the Massachusetts insolvent laws; if yea, when was his petition filed?

3. Whether or not did said Dallinger ever file before you any schedules of his debts and of his assets; if yea, where is his schedule of assets; will you examine your papers and see if you have it, and also the schedule of debts? If you have said schedules, will you please annex copies thereof to your answer? If you have not got them, please state when and where you last saw the same. [Objected to, G. M.]

4. Whether or not do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or the matters at issue in this suit? If yea, state the same fully in your answer.

C. M. ELLIS, *Solr. for compt.*

SAMUEL PLATT, in eq.,
vs. }
AMORY HOUGHTON and al.

Answers of the said Stanton to the direct interrogatories to him addressed and to the commission prefixed—annexed.

1. I am forty years of age, reside in Boston, and am a counsellor at law.

2. I know the parties to the suit, and John Dallinger, jr. I have known Platt about one year and a half, McLure two or three years, and Dallinger six or seven years.

3. Previous and at May 14, 1846. Dallinger was a general client of mine, though he did business with other counsel also. I never was counsel for McLure.

4. At or about the time stated, I heard a conversation between Platt and Dallinger, but none with McLure, or which he participated in; there were two or three brief conversations between Dallinger and Platt in my presence, and I do not remember that any one else was present; I cannot undertake to give the whole of these conversations, as I have forgotten some things; they related to the transfer of certain real estate in Cambridge Port from Dallinger to Platt, in payment or part payment of certain copper stock which Platt was to transfer to Dallinger; the bargain between them was not made in my presence; I cannot give the language of these conversations, and only my best present recollection of what I understood to be the substance of them, which was that Dallinger was to convey this real estate to Platt subject to two mortgages on it; the amount of the mortgages I cannot state, though I believe I then understood what that amount was; I understood these mortgages to be subsisting mortgages, though I can't say it was so said at the time.

5. Though there might have been something said about the time of redemption; I have no recollection of it; as to the rest of the question I cannot answer further than I have.

6. I have no recollection of it, though there might have been something paid on the copper stock by Dallinger in my presence; but of this I am not certain.

7. It was arranged between Platt and Dallinger in my presence that as Platt was just going to take the cars for New York, and the deed was not yet made out, that the deed should be delivered to me for Platt, and that I should see that it was in due form and see it recorded; and the day or day or two after Platt went, the deed was presented to me by Dallinger or McLure (and I think Dallinger,) and I looked the deed over and received it, and caused it to be recorded.

8. The deed spoken of in the last answer was a deed from Adam Hoyt of about the date mentioned; it was delivered to me in my office in Boston about the time of its date; Platt had then gone, as I understood, via New York to Pennsylvania; it was delivered and recorded as stated.

9. Myself and William E. Parmenter.

10. I do not know where said schedules are; I have not seen them for some months, and have made an effort to find them and am unable to.

11. I have had the schedules, and I have seen them in the possession of Mr. Parmenter and Mr. Dallinger, and they have been examined by others; I have searched my office for them, and have inquired for them of Mr. Parmenter and Mr. Dallinger, and without success; I saw them

and had them soon after, and some time after my appointment as assignee, and after that they went into the possession of Mr. Parmenter, since which time I am not aware I have seen them.

12. In the schedules there was a statement in general terms of all Dallinger's right to any real estate in Cambridge, as I recollect; if there was any description it was very general; I can't tell what estate it referred to now; there was mentioned also personal property at Cambridge Port.

13. It pays the expenses and a small trifle allowed to Dallinger, and nothing else.

14. I do not recollect of a settlement; but subsequent to the delivery of the deed I saw notes in the hands of Platt, signed by Dallinger, which I understood from both of them were given by Dallinger for the copper stock purchased of Platt: I do not know they were ever paid; the last I saw of them they were in the hands of Platt, and one or two of them were then due.

15. I have no recollection of being asked about it; if I was, I undoubtedly said three years; I was not acting as counsel for either party.

16. I do not recollect having any conversation with McClure; from what was said I understood the deed was to come from Dallinger. and this may have been stated to me by Platt, and I presume it was; afterwards I understood from either Dallinger or Platt, that it was to come from McLure, and it finally did come from Hoyt.

17. As before said, I have no recollection about any conversation with McLure, and I can't state any more than I have stated about the sayings or doings of said Dallinger.

18. I know nothing more.

HENRY B. STANTON.

Answers of said William E. Parmenter, to the interrogatories to him addressed and to the commission prefixed—annexed.

1. I am thirty-one years of age, reside in Cambridge, and am an attorney at law.

2. I do.

3. Henry B. Stanton and myself.

4. I have seen schedules filed at the first meeting of Dallinger's creditors; the schedules have been at different times in my possession, in Mr. Stanton's and Mr. Dallinger's; the last time I saw them was at the special meeting for the examination of Dallinger on the petition of certain of his creditors, held at the office of Mr. Warren, master in chancery, Charlestown; the schedules were inadvertently left there, and a few days after I made inquiry at the office, and at my request a search was made there for them; I have not seen them since, nor do I know where they are.

5. My recollection is, that there was stated in the schedules in some general terms, all his (Dallinger's) interest in 4 houses in Cambridge Port; it was not in those words, but to that effect.

6. I know nothing.

WM. E. PARMENTER.

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Answers of said G. W. Warren, to the interrogatories to him addressed, annexed to the commission hereto prefixed.

1. I am thirty-four years old and reside in Charlestown. I am counsellor at law and master in chancery.

2. This petition was filed before me June 12, 1846.

3. The schedules were filed at the first meeting and were placed in the hands of the assignees; my impression is they were produced at the 2d and 3d meetings. I have not the schedules and cannot give copies therefrom; I keep no papers; they are in the custody of the clerk; I think I last saw them at the day of the last meeting at my office.

4. I know nothing. G. WASHINGTON WARREN.

U. S. A., FIRST CIRCUIT,
District of Massachussetts.

Personally appeared before me the above named Stanton, on the twenty-eighth of September, and said Parmenter on the thirtieth day of September, and said Warren on the first day of October, A. D. eighteen hundred and forty-seven, and being severally sworn to speak the truth, the whole truth, and nothing but the truth, in relation to the cause for which said depositions were taken, were severally examined each on the interrogatories to him addressed, and the answers of each written down by me in his presence; after being read to him by me, were by him subscribed in my presence as and for his deposition. Taken at the request of the complainant to be used in the suit specified in the commission hereto prefixed, and by authority thereof.

EDW. G. LORING, *Com'r.*

Fee. Com'r. 9, witness 1, do. 1, do. 1.

[L. S.] UNITED STATES OF AMERICA,
Massachusetts district, ss.

The circuit court of the United States, within and for the Massachusetts district, to George S. Hillard, Charles Sumner, Edward G. Loring, George T. Curtis, W. W. Story, Charles L. Woodbury, B. F. Hallett, all of Boston, esquires, or to either of them.

Know ye, that reposing confidence in your wisdom, prudence, and fidelity, we have appointed, and by these presents do authorize and empower you to take the answers to the interrogatories to be propounded to the witnesses to be brought before you, and to be examined on behalf of either party, and to be used in a certain cause now pending in said court, to wit, Samuel Platt, plaintiff in equity, versus Amory Houghton and al., defendants.

And to this end, at certain days to be by you appointed for that purpose, to cause said witnesses as aforesaid to be brought before you, and each witness, while present before you, to examine carefully on oath touching the premises. And when you shall have taken the examination as aforesaid, to reduce, or cause the same to be reduced to writing, and to be subscribed by each of said witnesses in your presence. And the same, so taken and subscribed, to return, together with this commission and your doings herein enclosed, sealed and directed to the circuit court aforesaid, now holden at Boston, as soon as the same shall have been executed.

In testimony whereof we have caused the seal of the said circuit court to be hereunto affixed.

Witness the honorable Roger B. Taney, at Boston, this ninth day of September, in the year of our Lord one thousand eight hundred and forty-seven. JAS. B. ROBB, *Clerk*.

N. B.—You shall not, except by consent of the parties in writing, permit either party to attend at the taking of the depositions, either himself, or by any attorney or agent, nor to communicate by interrogatories or suggestions with the deponents whilst giving their depositions in answer to the interrogatories annexed to this commission. And you shall take such depositions in a place separate and apart from all other persons, and permit no person to be present during such examination, except the deponents and yourself, and such disinterested person (if any) as you may think fit to appoint as a clerk, to assist you in reducing the depositions in writing. And you shall put the several interrogatories and cross interrogatories to the deponents in their order, and take the answer of the deponents to each fully and clearly.

Circuit court of the United States, district of Massachusetts.

SAMUEL PLATT, complainant,
vs. } In equity.
DAVID MCGUIRE, respondent.

Interrogatories to be administered to John Dallinger, junior, a witness to be examined under a commission to issue in the above cause, on the part and behalf of the respondent.

1st. State your age, residence, and occupation.

2d. Whether or not do you know the parties complainant and respondent in the above entitled cause; if yea, how long have you known them, or either and which of them?

3d. Do you know the parcel of land lying in that part of Cambridge called Cambridgeport, and bounded by Harvard, Mason, and Moore streets, so called, and by a certain passage-way; if yea, how long have you known it?

4th. Whether or not have you ever been upon the above described land, or any part thereof, with said Platt, the complainant; if yea, when, how many times, and who was present at each time?

5th. If you have said that you have been upon said land, or any part thereof with said Platt, state for what purpose you were there with him, and whether you had any conversation with him while there in relation to said land or any part thereof; and, if yea, state what that conversation was.

6th. Whether or not did you ever bargain with said Platt for the sale to him of said land or any part thereof; if yea, when and where did you so bargain, and what was that bargain? State fully.

7th. If you have said that you did bargain with said Platt for said land or a part thereof, state whether it was for the whole or a part that said bargain for a sale was made.

8th. Whether or not did you ever, upon the premises, point out to said Platt the boundaries of the land so bargained for? If yea, look at the sketch hereto annexed, and describe thereon the land so pointed out, and state when they were so pointed out.

9th. If you have said that you did bargain with said Platt for the sale to him of said land or any part thereof, state whether or not any plan of the land so bargained for was exhibited by you to said Platt at the time of said bargain; and, if yea, annex a copy of said plan to your answer.

10th. Have you ever drawn any deed or deeds of said land bounded by said Harvard street, Mason street, Moore street, and passage-way, or of any part thereof; if yea, what deed or deeds have you so drawn?

11th. If you have said that you have drawn a deed or deeds of said land, or a part thereof, from Royal Richardson to the said respondent, state whether you took the description of the land thereby conveyed, contained in said deed to Richardson to the respondent, from any other deed; and, if yea, from what other deed.

12th. If you have said that you took said description from some other deed, state whether you intended to copy the description in such other deed contained, or whether you intended to vary it; and, if you say that you intended to vary it, what variation did you intend to make, and what was your reason for so varying it.

13th. Had you any, and if any, what, interest in or title to said land so bargained for, or any other land between said streets and passage-way, on the fourteenth day of May, in the year eighteen hundred and forty-six?

14th. Have you ever had any interest in, or title to, any of the lands mentioned in the preceding interrogatory; if yea, what was it?

15th. If you have stated that you did bargain with said Platt for any lands between said streets and passage-way, and that by the terms of said bargain said Platt was to take a conveyance of such lands subject to mortgages, state the number of such mortgages, their respective amounts, and whether any thing, and, if any thing, what, was said by you, or by said Platt in your presence, as to the form or the time for redeeming such mortgages, or either of them.

16th. Whether or not have you ever had any interest in a certain mortgage on lands between said streets and passage-way, given by Adam Hoyt to said respondent; if yea, what was that interest?

17th. Have you at any time since the said fourteenth day of May, in the year eighteen hundred and forty-six, had any conversation with said Platt in relation to said mortgage of said Hoyt; if yea, did said Platt in any of such conversations express any dissatisfaction in regard to said mortgage; and, if any, in what respect did he express himself dissatisfied? State fully.

18th. Whether or not did you at the time of the aforesaid bargain, or at any other time on or before said fourteenth day of May, state to said Platt by whom the deed to him would be given; if yea, by whom did you state that it would be given?

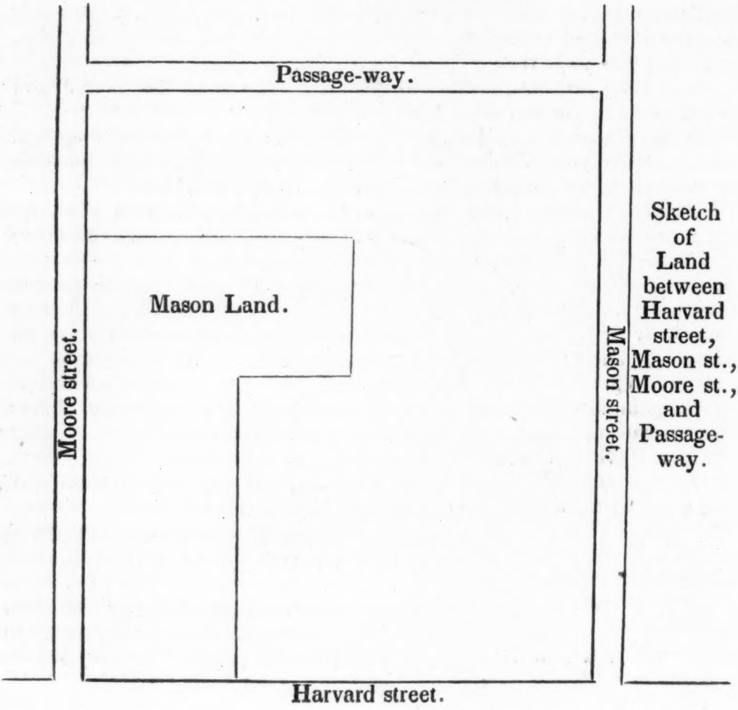
19th. Whether or not did you, on or at any time before said fourteenth day of May, inform the respondent of any statement you had made to the said Platt in regard to the time of redemption of said mortgage of said Hoyt to the respondent; if yea, what statement did you inform him that you had made?

20th. Whether or not have you ever directed an assignment of said mortgage of Adam Hoyt to be made; if yea, to whom did you direct such assignment to be made?

21st. Whether or not have you now, or have you ever had, any agreement or understanding with any person or persons as to the application of the proceeds of said mortgage; if yea, what is it, and with whom?

22d. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

DAVID McCLURE, *Respondent*.
By his attorney, H. M. CHAMBERLAIN.



Sketch
of
Land
between
Harvard
street,
Mason st.,
Moore st.,
and
Passage-
way.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

SAMUEL PLATT, comp.,
vs. } In equity.
DAVID MCCLURE, resp.

The said complainant objects to any evidence of John Dallinger, jr., being admitted in this case, because he is interested and incompetent.

The complainant objects to the 12th direct interrogatory to said Dallinger.

Cross interrogatories to be proposed to John Dallinger, jr.

1. If, in answer to the 6th and 7th direct interrogatories, you state that you did bargain with said Platt for the land inquired of, state whether or not said bargain was in writing.

2. If, in answer to the 8th direct interrogatory, you state that you did point out the boundaries of said land, state whether you did not point out said premises as bounded by a line running straight from Harvard street, by land of Mason to the end of Mason's lot, and from thence straight to Moore street.

3. If you answer that you did so point out said land, was George O. Brastow present at the time?

4. Whether or not did you have any interest in the premises between Harvard, Mason, and Moore streets, and the passage-way, from September, 1835, to May 14, 1846?

5. What, if any thing, was paid to Royal Richardson for said premises; when, and by whom; and when were said premises conveyed to said McClure, and by whom, and by whose direction?

6. Whether or not are Royal Richardson, Eliza A. Richardson, and William F. Richardson, in any way related to you or said McClure? If yea, how?

7. Whether or not were you in any way interested in said premises whilst they stood in the name of Eliza A. Richardson, William F. Richardson, and Royal Richardson; what was the consideration paid on the conveyance to each of said persons, and also to said McClure, and by whom, and in what manner?

8. Whether or not was any consideration paid by Adam Hoyt for said premises, May 14th, 1846; if yea, what, when, and to whom, and for whose use?

9. Whether or not was any thing paid to said Hoyt for taking and making conveyance of said premises; if yea, what?

10. Who first proposed that said Hoyt should take a deed of said premises and convey the same to said Platt, and where?

11. Did you, at the time you made a bargain with said Platt for said premises, state to him that said Hoyt held said premises, and had given a mortgage thereon; or that said Hoyt would take them, and give a mortgage, and then convey them to said Platt; or did you state to said Platt how said Hoyt and you were concerned in said premises?

12. Whether or not, in the last of April or first of May, 1846, and when, did you call on said McClure to see if he would convey said premises?

13. At that time was any thing said as to the form of said mortgage, or as to any power of sale being put into it; if yea, what was said about it?

14. Whether or not did said M'Clure agree that you might sell said premises and make a mortgage for $3000, if you would find a person to take said mortgage within four months?

15. When was the power of sale in the mortgage given by Hoyt to McClure, May 14, 1846, first proposed to be inserted in said mortgage, and by whom?

16. Who acted as your counsel in your transaction with Mr. Platt, relative to the sale of said premises?

17. Whether or not did you or your counsel not speak to said Platt, before said premises were conveyed to him, and the deed from said Hoyt to said Platt, May 14, 1846, delivered, of his having three years, from the time when the mortgage on said premises should become due, to redeem?

18. What arrangement was made by and between you and said Platt, as to the delivery of the deed to said Platt; to whom was it to be delivered for him; was not the settlement between you and said Platt then made, and did said Platt not then leave this State for home?

19. Whether or not was the price you sold said premises to said Platt the fair value of the same?

20. Whether or not did you give to said Platt, May 13th, 1846, three notes, for $233.33 each, payable in one, two, and three months respectively, and $100 in money, besides said land, for the stock which said Platt then transferred to you; have said notes been paid?

21. What is the present value of said land conveyed to said Platt by deed, May 14, 1846?

22. Whether or not did you petition for the benefit of the Massachusetts insolvent law in 1846; if yea, on what date?

23. Up to what time, prior to your petitioning as aforesaid, did you meet your payments as they became due, and when did your notes first lay over?

24. On May 14th, 1846, and at the time of your said petitioning for the benefit of the insolvent law, what did you owe to Amory Houghton, of Cambridge?

25. When did you agree with said Houghton to take the mortgage made by said Hoyt to said McClure, May 14th, 1846, and when did you first talk with him about it?

26. On what terms did said Houghton agree to take said mortgage?

27. What did said Houghton pay to you, or to said McClure, for said mortgage in August, 1846?

28. How is said Houghton related to you and to said McClure?

29. For what did you owe said Houghton in 1846? Annex a true statement and copy of your accounts with said Houghton up to May 14th, 1846, and also at the first of September, 1846.

30. Whether or not have you, directly or indirectly, or has any one for you, paid to Burrage & Gale any money since February, 1845; if yea, how much, and when; what property have you transferred to them within that period?

31. Whether or not did David McClure, the respondent, in the latter part of 1845, or early in 1846, furnish to you $1,450; if yea, when?

32. How was said money raised? State the whole transactions.

33. Was not $500 of said $1,450 advanced you by Burrage and Gale on or about March 27th, 1846?

34. Was not $500 thereof advanced by William Burrage, of Boston, on or about the 27th March, 1846?

35. Was not a note given to said Wm. Burrage for said sum; if yea, state for what amount, on what time, and who were the parties to said note?

36. Whether or not was said note in any manner secured?

37. Whether or not were Burrage & Gale in any way secured. If yea, state fully how?

38. What sum was paid to said William Burrage for discounting said note?

39. Who now holds said note, and where did you last see said note?

40. When and how was the remaining $450 of said $1,450 furnished to you?

41. What money has been paid, or property transferred, by you, or by any one for you, to Burrage & Gale within the last two years?

42. What money has been paid, or property transferred, by you, or by any one for you, to William Burrage, within the last two years?

43. What money has been paid, or property transferred, by you, or by any one for you, to David McClure, the resp't, within the last two years?

44. Did you not pay to said McClure, the latter part of the year 1846, the sum of seventy-five dollars; if yea, when?

45. For what did you pay said sum to said McClure?

46. Whether or not did you ever assign to said McClure a lease of store No. 11 and 13, Washington street; if yea, when?

47. When was said lease given, on what terms, and for how long a time?

48. What amount was collected by said McClure, or by any one for him, of the tenants to whom you or said McClure underlet said stores; for how much did you let said stores?

49. When were the new houses on the premises mortgaged by Hoyt to McClure, May 14, 1846, finished?

50. Up to May 14th, 1846, by whom were said houses and the old house on said premises occupied?

51. Who received the rents of the said houses respectively, and what was the rent of each of them?

52. The spring of 1844, to May 14th, 1846?

53.

54. When did said McClure first begin to occupy said old house?

55.

56. If, in answer to the 10th direct interrogatory, you say you have drawn any deeds therein inquired of, state whether you drew the deeds of Hoyt to McClure, and Hoyt to Platt and McClure, May 14th, 1846, or did you procure the same to be drawn.

57. If, in answer to the 15th direct interrogatory, you state that any thing was said about two mortgages, state whether you did not state that said Platt would have three years to pay off the same.

58. Who did you state to said Platt held said mortgages?

59. When did you state that said mortgages were given?

60 On what time did you state they were to run?

61. At the time said mortgage to said McClure was executed, or before that time, did you state to said McClure what you had told to said Platt relative to said property, and the mortgages thereon; if not why did you not tell said McClure what you had stated to said Platt relative thereto?

62. If, in answer to the 19th direct interrogatory, you say you did inform said McClure of any statement you had made to said Platt, did you state to said McClure all you had told said Platt; and did you inform said McClure it was all you had told said Platt?

63. Was any one present when you made the bargain with said Platt relative to said premises; if yea, who was it?

64. Did not said McClure authorize you to have said mortgage of May 14th, 1846, to him made, if you would find a purchaser therefor?

65. If, in answer to the 17th direct interrogatory, you answer as to any dissatisfaction expressed by said Platt, state whether you did not threaten to prosecute him for libel, and whether said Platt did not then complain to you that you had told him he would have three years to redeem; and if you did not say to him that you referred only to the old mortgage when you told him so?

66. Have you not read the answer of David McClure, the respondent in this case, or consulted with him in relation thereto?

67. Have you not known the various interrogatories and cross interrogatories to be proposed to you in this case, or the substance thereof, or perused the same, or a copy thereof, or had the same, or any of them, stated to you before the same have been propounded to you by the magistrate taking your deposition, on his taking your answers thereto?

68. Have you not conversed with said McClure and his counsel about this suit?

69. Whether or not is William Burrage, or Mr. Burrage, of the firm of Burrage & Gale, related to you or said McClure, and how; is said Gale related to you?

70. Was it before or after you had conversation with said Platt, about the purchase of said premises, that you first talked with said McClure about having the power of sale in said mortgage of May 14th, 1846?

71. Do you know, or can you state, any other matter or thing that

can be of benefit to the complainant in this suit? If yea, set forth the same [as] fully as if thereto specially interrogated.

72. Where are the schedules filed by you in insolvency; when and where did you last see them? Look among your papers, and state whether you have or have not got, or can find, the schedule of your property. If you have said schedule, annex a copy.

SAMUEL PLATT,
Complainant.
By his att'y, C. M. ELLIS.

Additional interrogatory in chief.

1. State whether or not you have received within a month any release from said McClure; and if yea, state when, and annex a copy thereof to your answer in this case.

Additional cross interrogatories.

1. What did you pay for said release inquired of in the 1st additional interrogatory?

2. Did you not pay Adam Hoyt for taking and making the deeds of land which was conveyed to the complainant Platt, by deed May 14, 1846; was he not paid therefor?

C. M. ELLIS,
Sol'r for comp't.

Deposition of John Dallinger, Jr.

I, John Dallinger, jr., of Cambridge, in the county of Middlesex, Commonwealth of Massachusetts, trader, of lawful age, depose and say, in answer to the following written interrogatories, propounded to me in the case of Samuel Platt, complainant, vs. David McClure, respondent, put and propounded in behalf of the respondent, by B. F. Hallett, commissioner, to take said deposition.

1st. State your age, residence, and occupation.

1st. Ans. I am in the thirty-fifth year of my age, reside in Cambridge, in the State of Massachusetts, and am a trader.

2d. Whether or not do you know the parties, complainant and respondent, in the above entitled cause; if yea, how long have you known them, or either, and which of them?

2d. Ans. I do. I have known said McClure from fifteen to eighteen years, and the said Platt about fifteen to eighteen months.

3d. Do you know the parcel of land lying in that part of Cambridge called Cambridgeport, and bounded by Harvard, Mason, and Moore streets, so called, and by a certain passage-way; if yea, how long have you known it.

3d. Ans. I do, and have known it for more than twenty years.

4th. Whether or not have you ever been upon the above described land, or any part thereof, with said Platt, the complainant; if yea, when, how many times, and who was present at each time?

4th. Ans. I went to the land, rode down to the land with Mr. Platt and George O. Brastow once, and but once; I went to show them the property. Do not recollect whether I went on it. I believe Mr. Platt went on it, and Mr. Brastow also. This was, I think, the very last of April, eighteen hundred forty-six. It might have been the first of May. No other persons, that I remember, were present. I remember no other time seeing the land with said Platt.

5th. If you have said that you have been upon said land, or any part thereof, with said Platt, state for what purpose you were there with him, and whether you had any conversation with him while there in relation to said land, or any part thereof; and if yea, state what that conversation was.

5th. Ans. I went there to show him the property, anticipating a trade. I had the selling of the land and houses. There were two double houses on it. I had the conversation about selling with Platt and Brastow. They called upon me to go down and see the land. I had had some previous conversation with them about selling the land. I understood that said Platt was to be the purchaser, if we traded. I had had some conversation with them about copper stock; I showed said Platt one of the blocks of houses, and told him it belonged to a brother-in-law of mine; that there was a mortgage on the whole property for twenty-five hundred dollars, with two years interest due the first of April; that if I traded with him, I should sell it to him, subject to two mortgages amounting to fifty-five hundred dollars, and three hundred dollars interest, which interest was due the first of April, making fifty-eight hundred dollars; that I wanted, if I took his copper stock at his price, ten thousand dollars for the property, including the said mortgages. Said Platt replied that he would think of it and let me know at some other time. I don't recollect any thing else now.

6th. Whether or not did you ever bargain with said Platt for the sale to him of said land, or any part thereof; if yea, when and where did you so bargain, and what was that bargain? State fully.

6th. Ans. I bargained with said Platt to sell the whole of the land to him, somewhere between the tenth and fifteenth of May following. The bargain was made in my counting room, No. 13, Doane street, in Boston. A plan of the land, as surveyed by a regular surveyor, lay before us; after having talked the matter over minutely, and figuring up the number of feet as shown by said plan, said Platt agreed to buy the property, subject to the two mortgages, with the express understanding that the second mortgage would be held by David McClure, and it would have to be paid the day it fell due, which would be one year from the day the papers would be made. The reason given for this was that said McClure, who was a brother-in-law of mine, and very recently a part owner of the property, was to receive the said mortgage as his pay for his claim on the property. I was to take, in pay for said purchase, from said Platt, certain copper stock, that is to say, the price of the property was to be forty-two hundred dollars over the mortgages; Platt stated that he had purchased the land where the copper stock was located, and that the land alone was worth a dollar a share of the stock, and upon this representation I agreed to take one thousand shares in said copper stock, at five dollars per share, and to pay him in notes and money the eight hundred dollars over the amount of the purchase of the property. The bargain was completed, and within a day or two consummated, and the papers passed.

7th. If you have said that you did bargain with said Platt for said land, or a part thereof, state whether it was the whole or a part that said bargain for a sale was made.

7th. Ans. It was for the whole land, meaning all except that part on the plan which belonged to the Masons. It was known as the Messenger lot.

8th. Whether or not did you ever, upon the premises, point out to said Platt the boundaries of the land so bargained for? If yea, look at the sketch hereto annexed, and describe thereon the land so pointed out, and state when they were so pointed out.

8th. Ans. I think I did point out as near as I could the boundaries on the premises, but did not do so so particularly as I should, because I had a printed plan at my counting room, which I agreed to show him; I did afterwards show it to him, and the bargain was based on that plan. On the sketch shown me now, in the interrogatories, I have described by pencil lines and the words "Mason Land," the boundaries I in part pointed out on the premises, and afterwards particularly on the plan at my counting room, to said Platt.

9th. If you have said that you did bargain with said Platt for the sale to him of said land, or any part thereof, state whether or not any plan of the land so bargained for was exhibited by you to said Platt at the time of said bargain; and if yea, annex a copy of said plan to your answer.

9th. Ans. The plan was shown him at the time the bargain was made, in my counting room, as stated in my foregoing answers. The plan was handed to said Platt, in the office of Mr. Stanton, his attorney, at the time we settled up for the copper stock and property, and I have seen it in his possession since. I have not had it since. I cannot give a copy. The sketch shown me, as a part of the interrogatories, and as marked by me in pencil, is as nearly correct in the outlines as I can recollect.

10th. Have you ever drawn any deed or deeds of said land, bounded by said Harvard street, Mason street, Moore street, and passage-way, or of any part thereof; if yea, what deed or deeds have you so drawn?

10th. Ans. The first deed I drew of said land was about three years ago, conveying the said property from Royal Richardson to David McClure. I also drew a deed of the same land from David McClure to Adam Hoyt, in May, eighteen hundred and forty-six, and on or about the same day I drew a deed of the said land from said McClure to said Samuel Platt. Also a mortgage deed, at the same time, from said Hoyt to said McClure. I do not recollect any other deed.

11th. If you have said that you have drawn a deed of said land, or part thereof, from Royal Richardson to the said respondent, state whether you took the description of the land thereby conveyed, contained in the said deed of Richardson to the respondent, from any other deed; and if yea, from what other deed.

11th. Ans. I believe I took it from the deed of the said Richardson to the aforesaid McClure.

12th. If you have said that you took said description from some other deed, state whether you intended to copy the description in such other deed contained, or whether you intended to vary it; and if you say that you intended to vary it, what variation did you intend to make, and what was your reason for so varying it?

12th. Ans. I intended the deed to be an exact copy, in the description, of the deed from which I took it. In making out the deed of the property, about three years ago, from Royal Richardson to David McClure, I accidentally left out one or two of the bounds, and the deeds I have made out since were copies of that deed, and contained the same omission. I knew nothing of this error in the deeds until months after said Platt came into possession of the property. I think I was first told of the error by Amory Houghton, of Cambridge, after he had purchased the mortgage on the property. The same error existed in his mortgage deed. I intended, in all the deeds, to make a description including the omitted bounds. The deed which I made from Richardson to McClure, as above described, and in which the error first occurred, I intended to have been a copy of the description in a deed of the land from Richardson to Richardson, which contained all the bounds correct.

13th. Had you any, and if any, what interest in or title to said land so bargained for, or any other land between said streets and passageway, on the fourteenth day of May, in the year eighteen hundred and forty-six?

13th. Ans. I owned the property at that time, which I traded to Platt, having purchased or bargained for McClure's interest in it.

14th. Have you ever had any interest in or title to any of the lands mentioned in the preceding interrogatory; if yea, what was it?

14th. Ans. In the spring of eighteen hundred forty-four, Royal Richardson and myself purchased this property of a Mr. Richardson, of Boston, it being understood between us that we were to be joint co-partners in the purchase. I furnished him (Royal Richardson) with the money we agreed to pay down, which was five hundred dollars, and he took a deed in his name, and gave a mortgage for the balance. Some short time after, I bargained with David McClure for the old house which was on a portion of the land, together with some forty-six hundred or forty-eight hundred feet of land. He immediately commenced remodelling the house. About this time, said Royal Richardson found some fault with the price I had sold the old house for to said McClure, and the result was that I agreed with said Richardson for his interest in the property. I promised said McClure a deed of the property he had bargained for immediately, in order that he might get it insured; presuming that, by the payment of a portion of the money to the person who held the mortgage above referred to, I could obtain a quit claim on that portion I had sold said McClure. But the holder of the mortgage refused to take a part of the money. I told McClure that he should have a deed of the whole, which would enable him to get his property insured, which he wished to do, and also make him secure for the money he had paid me, it being understood between us that as soon as I had paid the mortgage on the property he was to deed back to me all the property, except that portion which I had sold him. I found that I was unable to take up the mortgage as I expected; but with the assistance of said McClure, built a new double house on the property, it being understood that he, the said McClure, was to hold the property for what I might owe him, and also for security for what liabilities he might be under on my account, in rendering me pecuniary assistance from time to time. At or about the time I was negotiating with said Platt for the property, I informed said McClure of the fact; and in looking over my liabilities to him, the said McClure, I made the amount about three thousand dollars, which I told him would certainly cover all, including one thousand dollars that I was to give him for his house and land on the premises. I told him I wished him to take a mortgage for three thousand dollars on the property, and give it up to me. He objected so to do, until I had promised, within a certain time, to find him a purchaser for the mortgage. The result of the meeting was, he agreed so to do, which was complied with. I never had any written title.

15th. If you have stated that you did bargain with said Platt for any lands between said streets and passage-way, and that by the terms of said bargain said Platt was to take a conveyance of such lands, subject to mortgages, state the number of such mortgages, their respective amounts, and whether any thing, and if any thing, what was said by you, or by said Platt in your presence, as to the forms or the time for redeeming such mortgages, or either of them.

15th. Ans. I have already stated that there were to be two mortgages assumed by Platt, amounting, with interest, to about fifty-eight hundred dollars, to wit, one for twenty-five hundred dollars, and three hundred dollars interest, which interest was due the first of April, A. D. 1846, and the other for three thousand dollars, to be made and dated the day the papers were to pass; I mean immediately. It was agreed and understood between me and said Platt, that the said mortgage for three thousand dollars was to run one year from the date, and would have to be paid to a day. I stated this to said Platt at the time we closed the bargain, and he agreed to it. In regard to the other mortgage then outstanding, I told him I did not care any thing about the payment of that. They could not compel him to pay it under three years. Nothing was said about any form of the mortgages or either of them.

16th. Whether or not have you ever had any interest in a certain mortgage on lands between said streets and passage-way, given by Adam Hoyt to said respondent; if yea, what was that interest?

16th. Ans. No.

17th. Have you at any time, since the said fourteenth day of May, in the year eighteen hundred and forty-six, had any conversation with said Platt in relation to said mortgage of said Hoyt; if yea, did said Platt, in any of said conversations, express any dissatisfaction in regard to said mortgage, and if any, in what respect did he express himself dissatisfied? State fully.

17th. Ans. I do not recollect but one conversation with him, after that time touching the mortgage. The substance of the conversation was this: I met him some time in the summer of eighteen hundred forty-six, near the tavern where he boarded in Cambridgeport. He asked me if I could render him any assistance to pay off that mortgage, namely, the one due to McClure, provided he did not get the money himself. He said he expected he should have it long enough before it became due; but he was a comparative stranger here, and he might want my assistance. I told him I was not in the way of getting money, but would render him any assistance I could. I have no recollection of any other conversation with said Platt, touching said mortgage, within the time above inquired of, nor has he ever, in my presence, expressed himself dissatisfied with said mortgage.

18th. Whether or not did you, at the time of the aforesaid bargain, or at any other time on or before said fourteenth day of May, state to said Platt by whom the deed to him would be given; if yea, by whom did you state it would be given?

18th. Ans. Not a word was said about it, other than that I would have a deed ready for him at his attorney's office, where we agreed to meet and settle up the business.

19th. Whether or not did you, on or at any time before said fourteenth day of May, inform the respondent of any statement you had made to the said Platt, in regard to the time of redemption of said mortgage of said Hoyt to the respondent; if yea, what statement did you inform him that you had made?

19th. Ans. I told said McClure, before that time, that if I and Platt completed the bargain, it would be a one year's mortgage, without three years' redemption.

20th. Whether or not have you ever directed an assignment of said mortgage of Adam Hoyt to be made; if yea, to whom did you direct such assignment to be made?

20th. Ans. I have not.

21st. Whether or not have you now, or have you ever had, any agreement or understanding, with any person or persons, as to the application of the proceeds of said mortgage; if yea, what is it, and with whom?

21st. Ans. Not any.

22d. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause; if yea, set forth the same fully and at large in your answer.

22d. Ans. Some time after said McClure came into possession of the mortgage, I stated to Amory Houghton, of Cambridge, who was in my counting room, that McClure wanted the money for the mortgage, and that if he had the money, I should like him to purchase it, as McClure needed it. I also saw McClure, and told him I thought he could sell it to Houghton, and advised him to go and see him. The result of these propositions I afterwards learned from them.

Answers to cross interrogatories.

The complainant, objecting to any evidence of John Dallinger, jr., being admitted in this case, because he is interested and incompetent, and also objecting to the 12th direct interrogatory to said Dallinger, propounds in writing the following cross interrogatories, put to said Dallinger, on behalf of the said complainant, as follws:

1st. If in answer to the 6th and 7th direct interrogatories you state that you did bargain with said Platt for the land inquired of, state whether or not said bargain was in writing.

1st. Ans. It was not; there was no written agreement.

2d. If in answer to the 8th direct interrogatory you state that you did point out the boundaries of said land, state whether you did not point out said premises as bound by a line running straight from Harvard street, by land of Mason, to the end of Mason's lot, and from thence straight to Moore street.

2d. Ans. I pointed out no other boundaries than as I have stated in my answer to said 8th interrogatory; not to my recollection.

3d. If you answer that you did so point out said land, was George O. Brastow present at the time?

3d. Ans. I have already stated, in my answers in chief, the only time that I remember said Brastow was present in reference to the land, and what then occurred.

4th. Whether or not did you have any interest in the premises between Harvard, Mason, and Moore streets and the passage-way, from September, 1835, to May 14, 1846?

4th. Ans. I have already fully answered this question.

5th. What, if any thing, was paid to Royal Richardson for said premises; when and by whom; and when were said premises conveyed to said McClure, and by whom and by whose direction?

5th. Ans. I paid Royal Richardson one hundred dollars for his interest in the premises, about the time I took the deed from him to said McClure, the latter part of the question has been answered.

6th. Whether or not are Royal Richardson, Eliza A. Richardson, and William F. Richardson, in any way related to you or said McClure; if yea, how?

6th. Ans. Not that I know of.

7th. Whether or not were you in any way interested in said premises, whilst they stood in the name of Eliza A. Richardson, William F.

Richardson, and Royal Richardson; what was the consideration paid on the conveyance to each of said persons, and also to said McClure; and by whom and in what manner?

7th. Ans. In my answer to the 14th interrogatory in chief I have stated all my interest in the premises, and have answered the remainder of the question as far as I have any knowledge.

8th. Whether or not was any consideration paid by Adam Hoyt for said premises, May 14th, 1846; if yea, what, when, and to whom, and for whose use?

8th. Ans. Not any to my knowledge.

9th. Whether or not was any thing paid to said Hoyt for taking and making conveyance of said premises; if yea, what?

9th. Ans. Ten dollars.

10th. Who first proposed that said Hoyt should take a deed of said premises, and convey the same to said Platt, and where?

10th. Ans. I proposed it to Hoyt two or three days before Platt and I traded.

11th. Did you, at the time you made a bargain with said Platt for said premises, state to him that said Hoyt held said premises and had given a mortgage thereon, or that said Hoyt would take them and give a mortgage, and then convey them to said Platt; or did you state to said Platt how said Hoyt and you were concerned in said premises?

11th. Ans. I made no statement to him in relation to those matters. My simple object, in the transaction with Hoyt, was to avoid giving out my own mortgage note.

12th. Whether or not, in the last of April or first of May, 1846, and when, did you call on said McClure to see if he would convey said premises?

12th. Ans. I have stated, in a former answer, my interview with said McClure on that subject.

13th. At that time was any thing said as to the form of said mortgage, or as to any power of sale being put into it; if yea, what was said about it?

13th. Ans. This has been previously answered.

14th. Whether or not did said McClure agree that you might sell said premises, and make a mortgage for three thousand dollars, if you would find a person to take said mortgage within four months?

14th. Ans. He never made any agreement about my selling the premises. He had nothing to do with the selling. He agreed, as I have already stated, to take the mortgage, provided I would find a purchaser of it within four months.

15th. When was the power of sale in the mortgage given by Hoyt to McClure, May 14th, 1846, first proposed to be inserted in said mortgage, and by whom?

15th. Ans. Nothing was ever said about it, further than I have already stated.

16th. Who acted as your counsel in your transaction with said Platt, relative to the sale of said premises?

16th. Ans. I had none.

17th. Whether or not did you or your counsel not speak to said Platt, before said premises were conveyed to him, and the deed from said Hoyt to Platt, May 14, 1846, delivered, of his having three years, from the time when the mortgages on said premises should become due, to redeem?

17th. Ans. I did state to him that the only mortgage then on the premises had three years' redemption.

18th. What arrangement was made by and between you and said Platt, as to the delivery of the deed to said Platt; to whom was it to be delivered for him; was not the settlement between you and said Platt then made, and did not said Platt then leave this State for home?

18th. Ans. The next morning, after the bargain, we met at the office of Henry B. Stanton, esq., and there informed him of our trade, and said Platt requested him to look into the title. We met again, according to appointment, at the same place, at three or four in the afternoon, Mr. Platt stating that he was going home that afternoon. There the trade was consummated and settled. My impression is, that I there delivered the deed to said Platt, and he passed it to his attorney. I have no recollection of any thing different from that as to the delivery. We there parted, and I did not see said Platt for some time after.

19th. Whether or not was the price you sold said premises to said Platt the fair value of the same?

19th. Ans. It was a great deal too cheap for the pay I got. It was a barter trade. It was more than it was worth in cash.

20th. Whether or not did you give to said Platt, May 13th, 1846, three notes for $233 33 each, payable in one, two, and three months respectively, and $100 in money, besides said land, for the stock which said Platt then transferred to you; have said notes been paid?

20th. Ans. On the 13th or 14th of May, 1846, I gave him notes and money to the amount of eight hundred dollars, one hundred dollars of which was in money, the rest in notes, the dates and amounts not precisely recollected—the notes will show. I also sold him the land, and for all this I got the certificates of copper stock as described in my former answer in chief. Said notes have not been paid, and never will be, if I can help it.

21st. What is the present value of said land conveyed to said Platt by deed May fourteenth, eighteen hundred and forty-six?

21st. Ans. I do not know.

22d. Whether or not did you petition for the benefit of the Massachusetts insolvent law in eighteen hundred and forty-six; if yea, on what date?

22d. Ans. I did I think the last of June.

23d. Up to what time, prior to your petitioning as aforesaid, did you meet your payments as they became due, and when did your notes first lay over?

23d. Ans. I paid some notes nearly up to the time of going into chancery, and some I had let lay over perhaps ten years before.

24th. On May 14th, 1846, and at the time of your said petitioning for the benefit of the insolvent law, what did you owe to Amory Houghton of Cambridge?

24th. Ans. I do not recollect, but I think it was three or four hundred dollars.

25th. When did you agree with said Houghton to take the mortgage made by said Hoyt to said McClure, May 14th, 1846, and when did you first talk with him about it?

25th. Ans. I never made any agreement with him about it, and I have before stated all the talk I had with him about it.

26th. On what terms did said Houghton agree to take said mortgage?

26th. Ans. I know nothing about the terms. All he said to me was, he would buy it if he could buy it cheap enough to make something out of it.

27th. What did said Houghton pay to you or to said McClure for said mortgage in August, eighteen hundred and forty-six?

27th. Ans. I know nothing more on this point than I have stated.

28th. How is said Houghton related to you and to said McClure?

28th. Ans. Not at all as I know of.

29th. For what did you owe said Houghton in 1846? Annex a true statement and copy of your accounts with said Haughton up to May 14th, 1846, and also at the first of September, 1846.

29th. Ans. I owed him for borrowed money as near as I can recollect. May have been some portion of it merchandise. I have no accounts. The evidence of the debt is in his possession, and I have no memorandum of *them*.

30th. Whether or not have you, directly or indirectly, or has any one for you, paid to Burrage & Gale any money since February, 1845; if yea, how much, and when; what property have you transferred to them within that period?

30th. Ans. I don't know whether others have, and I do not now recollect that I have, paid them any. I had an order on them for lumber. I have not sold them any thing that I can now remember, nor transferred to them any property.

31st. Whether or not did David McClure, the respondent, in the latter part of 1845, or early in 1846, furnish to you $1450; if yea, when?

31st. Ans. He furnished me with 450 dollars at one time, and a thousand dollars at another time; I think it was in February or March of 1846.

32d. How was said money raised? State the whole transaction.

32d. Ans. I know nothing about it, only he said, I think, that he borrowed it.

33d. Was not 500 dollars of said 1450 dollars advanced you by Burrage & Gale on or about March 27th, 1846?

33d. Ans. No.

34th. Was not 500 dollars thereof advanced by William Burrage of Boston, on or about the 27th of March, 1846?

34th. Ans. Not to me, nor any body for me, to my knowledge.

35th. Was not a note given to said William Burrage for said sum? If yea, state for what amount, on what time, and who were the parties to said note.

35th. Ans. I know nothing about it.

36th. Whether or not was said note in any manner secured?

36th. Ans. I know nothing about it.

37th. Whether or not were Burrage & Gale in any way secured? If yea, state fully how.

37th. Ans. I know nothing about it.

38th. What sum was paid to said William Burrage for discounting said note?

38th. Ans. I know nothing about it.

39th. Who now holds said note, and where did you last see said note?

39th. Ans. I have already answered that I know nothing of such note.

40th. When and how was the remaining 450 dollars of said 1,450 dollars furnished to you?

40th. Ans. The 1,450 dollars I had of said McClure, in money, as before stated.

41st. What money has been paid, or property transferred, by you, or by any one for you, to Burrage & Gale, within the last two years?

41st. Ans. Not any.

42d. What money has been paid, or property transferred, by you, or by any one for you, to William Burrage, within the last two years?

42d. Ans. Not any.

43d. What money has been paid, or property transferred, by you, or by any one for you, to David McClure, the respondent, within the last two years?

43d. Ans. I have already stated all the property. I do not recollect any thing else, except I may have paid him seventy-five dollars within two years. My doubt is as to the time.

44th. Did you not pay to said McClure, the latter part of the year 1846, the sum of seventy-five dollars; if yea, when?

44th. Ans. I have answered above; I cannot fix the time, and have no means to do so.

45th. For what did you pay said sum to said McClure?

45th. Ans. I do not recollect the precise object. I think he was in my counting room, wanted the money, and I let him have it.

46th. Whether or not did you ever assign to said McClure a lease of store No. 11 and 13, Washington street; if yea, when?

46th. Ans. I think I did. I cannot state the time, and have not the lease.

47th. When was said lease given, on what terms, and for how long [a] time?

47th. Ans. I can't state the date. It was for five years, and I think it expired about a year ago.

48th. What amount was collected by said McClure, or by any one for him, of the tenants to whom you or said McClure underlet said stores? For how much did you let said stores?

48th. Ans. I do not know the amount. When the stores were all let, they rented for ten or twelve hundred dollars per annum.

39th. When were the new houses, on the premises mortgaged by Hoyt to McClure May 14, 1846, finished?

49th. Ans. In the early part of the year 1846, I think.

50th. Up to May 14, 1846, by whom were said houses, and the old house on said premises, occupied?

50th. Ans. I do not know who occupied the old houses. The new houses, (one of them,) was let to a portrait painter, whose name I do not recollect.

51st. Who received the rents of said houses respectively, and what was the rent of each of them?

51st. Ans. I do not know any thing about the rent of the old houses. One of the new houses was let to the said portrait painter for, I think, one hundred and fifty dollars, but am not sure of the sum. He had been tenant but about a month and a half when Platt bought, who, I suppose, collected the rent. I did not receive it, nor any rent from the property.

52d and 53d cross interrogatories are erased, so as to present no question to the witness, the words "Spring of 1844 to May, 1846," only remaining in the 52d interrogatory, to which the deponent says he can make no answer.

54th. When did said McClure first begin to occupy said old house?

54th. Ans. In the spring or summer of 1844, I bargained with him for it; he never occupied it. He has lived for about ten years in the same house he now occupies.

55th cross interrogatory is erased.

56th. If, in answer to the 10th direct interrogatory, you say you have drawn any leases therein inquired of, state whether you drew the deeds of Hoyt to McClure, and Hoyt to Platt and McClure, May fourteenth, eighteen hundred and forty-six, or did you procure the same to be drawn?

56th. Ans. I drew the deeds.

57th. If, in answer to the 15th direct interrogatory, you state that any thing was said about two mortgages, state whether you did not state that said Platt would have three years to pay off the same.

57th. Ans. I have already stated fully on that point.

58th. Who did you state to said Platt held said mortgages?

58th. Ans. I have already stated every thing I can about it.

59th. When did you state that said mortgages were given?

59th. Ans. I have already stated every thing that was said about the mortgages, within my recollection.

60th. On what time did you state they were to run?

60th. Ans. I answer as above already stated.

61st. At the time said mortgage to said McClure was executed, or before that time, did you state to said McClure what you had told to said Platt relative to said property, and the mortgages thereon? If not, why did you not tell said McClure what you had stated to said Platt relative thereto?

61st. Ans. I do not know that I ever told McClure that I had told Platt any thing about the mortgages except what I have already stated; because it was none of McClure's business. If I got him to take the mortgage, it was all he had to do about it, the remainder of the property, over the mortgages, being my own.

62d. If, in answer to the 19th direct interrogatory, you say you did inform said McClure of any statement you had made to said Platt, did you state to said McClure all you had told said Platt, and did you inform said McClure it was all you had told said Platt?

62d. Ans. I do not recollect any thing farther than I have already answered.

63d. Was any one present when you made the bargain with said Platt relative to said premises; if yea, who was it?

63d. Ans. Adam Hoyt, George B. Farnum, Josiah F. Leach, and several others whose names I do not recollect.

64th. Did not said McClure authorize you to have said mortgage of May 14th, 1846, to him made, if you would find a purchaser therefor?

64th. Ans. I have stated the whole case already—all that McClure had to do with it to my knowledge.

65th. If, in answer to the 17th direct interrogatory, you answer as to any dissatisfaction expressed by said Platt, state whether you did not threaten to prosecute him for libel, and whether said Platt did not then complain to you, that you had told him he would have three years to redeem, and if you did not say to him that you referred only to the old mortgage when you told him so?

65th. Ans. I did say, some time last year, when I met Mr. Platt in the street, that I was surprised to hear such reports of what he had said of me; that I had heard he had called me a damned rascal. I told him I was almost induced to prosecute him for a libel. I asked him if it would not have been more consonant with a gentleman, if he had felt dissatisfied, to have come to me, and perhaps the thing could have been explained. He said he felt mad because he thought I meant to cheat him out of a large piece of land, but from what McClure and Houghton had told him, he was satisfied it was an error and nothing intentional. The conversation was wholly on the measurement of the land. I do not recollect that a word was said about the mortgages or redeeming, at that time. When we parted, he said he felt much better than he had for some time.

66th. Have you not read the answer of David McClure, the respondent, in this case, or consulted with him in relation thereto?

66th. Ans. I heard the answer read, I think. I am not sure of it. I was in Mr. Chamberlain's office, when they were reading what I s pose was the answer. I have not consulted McClure at all in the premises. This was several months ago.

67th. Have you not known the various interrogatories and cross interrogatories to be proposed to you in this case, or the substance thereof, or perused the same or a copy therof, or had the same or any of them stated to you before the same have been propounded to you by the magistrate taking your deposition, or his taking your answers thereto?

67th. Ans. I never saw them, nor heard them until proposed to me here by the magistrate, nor any thing concerning them.

68th. Have you not conversed with said McClure and his counsel about this suit?

68th. Ans. I have not with said McClure. I have asked his counsel, Mr. Chamberlain, several questions, but he would give me no answer. He said I should know all about it in proper time.

69th. Whether or not is William Burrage, or Mr. Burrage, of the firm of Burrage and Gale, related to you, or to said McClure, and how; is said Gale related to you?

69th. Ans. William Burrage and Josiah Burrage, jr., and David McClure are my brothers-in-law. Said Gale is not related to me.

70th. Was it before or after you had conversation with said Platt about the purchase of said premises, that you first talked with said McClure about having the power of sale in said mortgage of May 14th, 1846?

70th. Ans. I have answered this question before; all I can say about it.

71st. Do you know, or can you state, any other matter or thing that can be of benefit to the complainant in this suit? If yea, set forth the same fully, as if thereto interrogated.

71st. Ans. I do not know what would be a benefit to him. I do not at this moment recollect any thing else.

72d. Where are the schedules filed by you in insolvency; when and where did you last see them? Look among your papers and state whether you have or have not got, or can find, the schedule of your property. If you have said schedule annex a copy.

72d. Ans. The last I saw of them was at the master's office, Mr. Warren, in Charlestown. I have no copy that I remember; I will look and see.

Additional interrogatory in chief.

1st. State whether or not you have received within a month any release from said McClure, and if yea, state when, and annex a copy thereof to your answers in this case.

1st. Ans. I have, and will annex it. It is not here.

Copy annexed to additional interrog. in chief.

Know all men by these presents, that I, David McClure, of Cambridgeport, in the county of Middlesex and Commonwealth of Massachusetts, in consideration of one dollar to me paid by John Dallinger, jr., of the said Cambridgeport, (the receipt whereof is hereby admitted,) do hereby release to the said Dallinger all claim which I now have or hereafter may have against the said Dallinger on account of a certain sale of land, in the said Cambridgeport, at the corner of Mason and Harvard sts., to one Platt, or on account of any thing done by the said Dallinger in relation to said sale; and I also release him from any claim which would arise from a partial or total rescinding of said sale. In testimony whereof I hereunto set my hand and seal, this ninth day of September, A. D. 1847.

DAVID McCLURE. [SEAL.]

H. M. CHAMBERLAIN.

Additional cross interrogatories.

1st. What did you pay for said release, inquired of in the 1st additional interrogatory?

Ans. I did not pay any thing.

3d. Did you not pay Adam Hoyt for taking and making the deeds of land which was conveyed to the complainant Platt, by deed, May 14th, 1846; was he not paid therefor?

Ans. I have stated already what I paid him.

JOHN DALLINGER, JR.

UNITED STATES OF AMERICA,
Massachusetts, ss., city of Boston.

On the thirteenth day of September, A. D. eighteen hundred and forty-seven, and by adjournment, on the fourteenth, fifteenth, sixteenth and seventeenth days of said September, the aforesaid deponent came before me, and having been duly sworn to testify the truth, the whole truth, and nothing but the truth, he gave the foregoing answers and deposition in reply to the several interrogatories and cross interrogatories hereto annexed, copies of which are transcribed, in their order, in this deposition, by request of the counsel for the respondent, made before the appearance of the deponent. And the said deponent subscribed the foregoing, which was reduced to writing by me, all the said answers having been written down in his presence. Taken by virtue of the commission hereto annexed, and to be used in the case therein mentioned. And all the directions contained in the said commission were carefully observed and obeyed by me in executing the same.

B. F. HALLETT, *Commissioner*.

Comm'r's fees,	$25 00.
Deponent's attend.	3 75.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

SAMUEL PLATT, complainant,
vs.
DAVID McCLURE, respondent.
} In equity.

Interrogatories to be administered to Adam Hoyt, a witness to be examined on behalf of the respondent.

1. State your age, residence, and occupation.
2. Whether or not do you know the parties, complainant and respondent, in the above entitled cause, either, and which of them?
3. Whether or not do you know of the purchase by said Platt, of any houses and land in Cambridge; if yea, with whom did said Platt bargain for the purchase of said houses and land?
4. If you have said that said Platt bargained with John Dallinger, jr., for said houses and land, state whether or not you were present when said bargain was made.
5. State when and where said bargain was made.
6. Whether or not any thing was said by said Platt or said Dallinger, at the time said bargain was made, about a mortgage or mortgages upon said houses and land? If yea, state all which was said.
7. Was any thing said at the time said bargain was made about a mortgage for any particular sum; if yea, what was that sum?
8. Was any thing said at the time said bargain was made about the time of payment of said mortgage; if yea, what was said, and by whom, and to whom was it said?
9. Was any thing said about the person who was to hold said mortgage; if yea, by whom and to whom was it said, and who was to hold said mortgage?
10. Who gave said mortgage, and to whom was it given?
11. When was said mortgage given?
12. State whether or not you have ever given any other mortgage of real estate.
13. If you have said that you did execute a mortgage on said estate in Cambridgeport, and also that you did hear a bargain made between said Platt and Dallinger, state whether that bargain was before or after you made said mortgage.

GEORGE MINOT, *for dft*.

To the 10th, 11th, and 12th interrogs. the comp. objects, because the answer of the witness would not be competent, and there is better evidence.

C. M. ELLIS, *Solr. for compt*.

14th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

H. M. CHAMBERLAIN,
Solr. for defendant.

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

SAMUEL PLATT
vs.
DAVID McCLURE. } In equity.

Cross interrogatories, to be proposed on behalf of the said Platt, to Adam Hoyt, a witness to be examined on the part of said McClure.

1. If, in answer to the 3d, 4th, and 5th direct interrogatories you say you did hear any bargain between said Platt and John Dallinger, jr., give the exact date when you heard any such; who was present?

2. At the time of any conversations you speak of in answer to the direct interrogatories, if any, did you not hear any thing said to said Platt, either by said Dallinger, or in his presence, about there being three years' redemption on the mortgages on the place bargained for by said Platt?

3. Did you ever hear said Dallinger state to said Platt that a deed was to be given to you to create a mortgage on said premises and the precise form in which said mortgage was to be given?

4. Whether or no was any, and if any, what sum was paid, or agreed to be paid, to you, for taking a deed of the premises bargained for by said Platt with said Dallinger, and giving a mortgage thereof, and making a conveyance thereof, to said Platt; who paid or agreed to pay you therefor?

5. Who paid for drawing said deeds and mortgage? State as to each particularly and separately.

6. Have you been, or are you, in any way indemnified for your liability on said mortgage; is there any agreement between you and said Dallinger or David McClure, as to your being called on for said note and mortgage? If you have any writing relative thereto, annex the same or a copy thereof.

7. Into whose possession did you deliver a certain deed of the premises above named, dated May 14, 1846, from you to said Platt?

8. Did you, before or at the time of executing and delivering said mortgage inquired of in the last cross interrogatory, have any conversation with said McClure, or hear any of any other person with him relative to said mortgage, or the bargain or conversation between said Dallinger and said Platt? Was not said Dallinger the only person whom you knew any thing of in the business?

9. To whom did you deliver the mortgage made by you of the premises inquired of, May 14th, 1846?

10. Did said Dallinger state to said Platt that said premises were subject to more than one mortgage?

11. Were you present when said Platt and Dallinger settled?

12. Was not the settlement between said Platt & Dallinger made May 13th, 1846, and was it not agreed between them that the deed should be left for said Platt with H. B. Stanton, esq., the attorney of said Dallinger, as soon as it should be made out, and after said Platt had left the State?

13. Did you ever, before May 14, 1846, hear said Dallinger say to said Platt, or said McClure say to said Platt, that they, or either of them, or you, were going to create a mortgage after that time?

14. Did you ever hear said Dallinger or said McClure say to said Platt, before May 14, 1846, that either of the mortgages on said premises was without right of redemption, and had a power of summary sale, or was a "grab" mortgage?

15. Who procured the deed made to you, and the deed and mortgage made by you, May 14th, 1846, to be drawn; by whom were they presented to you?

16. Who directed the form in which the mortgage made by you to David McClure, May 14, 1846, should be drawn?

17. Whether or not did you, before or at the time when said mortgage was given, hear any conversation between said Dallinger and said McClure, or any talk by either of them, relative to the form of said mortgage; did they not either of them state to you, as a reason for having a power of sale in said mortgage, that they wanted to get possession of the premises?

C. M. ELLIS, *Solr. for the compt.*

SAMUEL PLATT, complainant,
vs.
DAVID MCCLURE, respondent.

Deposition of Adam Hoyt.

Answers of Adam Hoyt, of Boston, in the county of Suffolk, to the following interrogatories from the interrogatories annexed on behalf of the complainant.

1st. State your age, residence, and occupation.

1st. Ans. My age is thirty-five, residence Boston, occupation dry goods jobber.

2d. Whether or not do you know the parties complainant and respondent in the above entitled cause, either, and which of them?

2d. Ans. I have seen said Platt, but am not acquainted with him. I have known said McClure more than two years.

3d. Whether or not do you know of the purchase by said Platt of any houses and land in Cambridge; if yea, with whom did said Platt bargain for the purchase of said houses and land?

3d. Ans. I do know of such a purchase, and said Platt bargained with John Dallinger, jr.

4th. If you have said that said Platt bargained with John Dallinger, jr., for said houses and land, state whether or not you were present when said bargain was made.

4th. Ans. I was.

5th. State when and where said bargain was made.

5th. Ans. On the twelfth or thirteenth of May, 1846, at No. 13, Doan street, Boston, in said Dallinger's counting room.

6th. Whether or not any thing was said by said Platt or said Dallinger at the time said bargain was made about a mortgage or mortgages upon said houses and land? If yea, state all which was said.

Ans. I heard said Dallinger tell said Platt that this second mortgage on the property would be held by a brother-in-law of his, (said Dallinger) Deacon McClure, and would have to be paid the very day it was due; but the other mortgage of twenty-five hundred he did not care any thing about, as they could not compel him to pay it when due. I recollect nothing more that was said about either of the mortgages, nor do I remember that any thing more was said about them.

7th. Was any thing said at the time said bargain was made about a mortgage for any particular sum; if yea, what was that sum?

Ans. There was, as I have stated in my former answer. I wish to add to that answer that it was also stated that the mortgage said McClure was to hold was for $3,000.

8th. Was any thing said at the time said bargain was made about the time of payment of said mortgage; if yea, what was said, and by whom, and to whom was it said?

8th. Ans. There was something said, as I have before stated, by said Dallinger to said Platt. I wish to add to that answer that when he said the mortgage would have to be paid the very day it was due, he also said, which would be one year from the time the papers were past.

9th. Was any thing said about the person who was to hold said mortgage; if yea, by whom, and to whom was it said, and who was to hold said mortgage?

9th. Ans. I have already answered this fully.

10th. Who gave said mortgage, and to whom was it given?

10th. Ans. I signed the mortgage deed. I do not recollect to whom it was given. I delivered it to said Dallinger after it was executed.

11th. When was said mortgage given?

11th. Ans. On the 12th and 13th of May, 1846.

12th. State whether or not you have ever given any other mortgage of real estate.

12th. Ans. I have not.

13th. If you have said that you did execute a mortgage on said estate in Cambridgeport, and also that you did hear a bargain made between said Platt and Dallinger, state whether that bargain was before or after you made said mortgage.

13th. Ans. It was before.

14th. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

14th. Ans. I have nothing further to add.

To the 10th, 11th, and 12th interrogatories the complainant objects, because the answers of the witness would not be competent, and there is better evidence.

Answers to the cross interrogatories.

1st. If in answer to the 3d, 4th, and 5th direct interrogatories you say you did hear any bargain between said Platt and John Dallinger, jr., give the exact date when you heard any such. Who was present?

1st. Ans. I have already answered the first inquiry as near as I can. There were present myself, said Dallinger, and Platt, G. B. Farnum, and others—I think some others. I cannot name any one else.

2d. At the time of any conversations you speak of in answer to the direct interrogatories, if any, did you not hear any thing said to said Platt either by said Dallinger or in his presence about there being three years' redemption on the mortgages on the place bargained for by said Platt?

2d. Ans. I did not.

3d. Did you ever hear said Dallinger state to said Platt that a deed was to be given to you to create a mortgage on said premises, and the precise form in which said mortgage was to be given?

3d. Ans. I do not recollect that I did.

4th. Whether or not was any, and, if any, what, sum was paid, or agreed to be paid, to you for taking a deed of the premises bargained for by said Platt with said Dallinger, and giving a mortgage therefor?

4th. Ans. Ten dollars was paid to me by said Dallinger for taking the deed and making the conveyance. As I have already stated, I cannot recollect to whom it was made.

5th. Who paid for drawing said deeds and mortgages? State as to each particularly and separately.

5th. Ans. I do not know.

6th. Have you been, or are you in any way, indemnified for your liability on said mortgage; is there any agreement between you and said Dallinger or David McClure as to your being called on for said note and mortgage? If you have any writing relative thereto annex the same or a copy thereof.

6th. Ans. No other way except by discharge through chancery. There is no agreement whatever as to my being called on for said note or mortgage. I have no writing relative thereto.

7th. Into whose possession did you deliver a certain deed of the premises above named, dated May 14th, 1846, from you to said Platt?

7th. Ans. I have before stated that I delivered it to said Dallinger. I mean the mortgage deed before mentioned.

8th. Did you, before or at the time of executing and delivering said mortgage inquired of in the last cross interrogatory, have any conversa-

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tion with said McClure, or hear any of any other person with him, relative to said mortgage, or the bargain or conversation between said Dallinger and said Platt; was not said Dallinger the only person whom you knew any thing of in the business?

8th. Ans. I do not recollect of any. Said Dallinger is the only one I had any thing to do with in transacting the business. I knew also of the bargain of said Platt with him as before stated.

9th. To whom did you deliver the mortgage made by you of the premises inquired of May 14th, 1846?

9th. Ans. This is before answered.

10th. Did said Dallinger state to said Platt that said premises were subject to more than one mortgage?

10th. Ans. He did. He stated to him about the two mortgages.

11th. Were you present when said Platt and Dallinger settled?

11th. Ans. I was present when the bargain was made. I never saw them together at any other time.

12th. Was not the settlement between said Platt and Dallinger made May 13th, 1846, and was it not agreed between them that the deed should be left for said Platt with H. B. Stanton, esq., the attorney of said Dallinger, as soon as it should be made out, and after said Platt had left the State?

12th. Ans. If by "settlement" is meant the bargain already stated, that was made the 12th or 13th of May, 1846. I know nothing in regard to the remainder of the question.

13th. Did you ever, before May 14th, 1846, hear said Dallinger say to said Platt, or said McClure say to said Platt, that they, or either of them, or you, were going to create a mortgage after that time?

13th. Ans. I did, before that time, hear said Dallinger say to Platt that the mortgage for three thousand dollars would be held by Deacon McClure, a brother-in-law of his, as I have already stated.

14th. Did you ever hear said Dallinger or said McClure say to said Platt, before May 14, 1846, that either of the mortgages on said premises was without right of redemption, and had a power of summary sale, or was a "grab mortgage?"

14th. Ans. I heard nothing said of a "grab mortgage;" I have stated all that I can state which was said.

15th. Who procured the deed made to you, and the deed and mortgage made by you, May 14, 1846, to be delivered; by whom were they presented to you?

15th. Ans. By said Dallinger. The rest I have answered.

16th. Who directed the form in which the mortgage made by you to David McClure, May 14, 1846, should be drawn?

16th. Ans. I do not know.

17th. Whether or not did you, before or at the time when said mortgage was given, hear any conversation between said Dallinger and said McClure, or any talk by either of them, relative to the form of said mortgage; did they not, either of them, state to you, as a reason for having a power of sale in said mortgage, that they wanted to get possession of the premises?

17th. Ans. I heard no conversation of that kind, and they made no such statement.

ADAM HOYT.

UNITED STATES OF AMERICA, *Massachusetts, ss.*

CITY OF BOSTON.

On the twenty-fifth day of September, A. D. eighteen hundred and forty-seven, the aforesaid deponent came before me, and having been duly sworn to testify the truth, the whole truth, and nothing but the truth, he gave the foregoing answers and deposition by him subscribed, in reply to the several interrogatories and cross interrogatories hereto annexed, copies of which are transcribed, in their order, in this deposition, by request of the counsel for the respondent, made before the appearance of the deponent; and all the said answers of the deponent were reduced to writing by me in his presence. Taken by virtue of the commission hereto, (in connexion with the deposition of John Dallinger, jr., taken under the same commission,) annexed, and to be used in the cause therein mentioned. And all the directions contained in the said commission were carefully observed and obeyed by me in executing the same.

B. F. HALLETT, *Commissioner.*

Commissioner's fee,	$6 00.
Deponent's fee,	1 25.

Circuit court United States, May term, 1847.

PLATT
vs.
HOUGHTON and al.

Agreed the complainant discontinue vs. Houghton; no costs to be taxed by the said Houghton. The costs of McClure not to be affected by this agreement.

H. M. CHAMBERLAIN,
For defendants.

May 28, 1847. C. M. ELLIS, *Sol'r for compt.*

CIRCUIT COURT U. S., *Massachusetts district.*

In equity.—May term, 1847.—May 27, 1847.

SAMUEL PLATT
vs.
AMORY HOUGHTON and al.

And now, by consent of parties, and pursuant to agreement, it is ordered, that said bill stand dismissed as against Amory Houghton, one of said defendants, without costs.

By the court: JAMES B. ROBB, *Clerk.*

CIRCUIT COURT U. S., *Massachusetts district, ss.*

In equity.—May term, 1847.—June 10, 1847.

PLATT and al.
vs.
AMORY HOUGHTON and al.

And now, after a hearing of the parties by their respective counsel, on the motion of the plaintiff in said bill, and the affidavits filed at the hearing, it is ordered, that the defendant, McLure, be enjoined and restrained from selling or otherwise disposing of the estate set forth and described in said bill, within 90 days from the date of this order, and that the expense of said injunction be paid by the said plaintiff.

By the court: JAMES B. ROBB, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
Massachusetts district.

PLATT, in equity,
vs.
MCCLURE.

The parties in this case agree, that the depositions of Amory Houghton and George O. Brastow on the part of the plaintiff, and John Dallinger, jr., on the part of the defendant, may be taken by the commission on oral interrogatories, and that a commission may issue forthwith, as by agreement on file.

GEORGE MINOT, *for defendant.*
C. M. ELLIS, *for plaintiff.*

CIRCUIT COURT, U. S., *Massachusetts district, ss.*

In equity.—May term, 1847.—September 7, 1847.

PLATT
vs.
HOUGHTON and al. McClure.

Pursuant to agreement of the parties, by their respective counsel, in writing, and filed in said cause, it is ordered, that the injunction heretofore issued in said cause continue to be in force until the final disposition of this cause.

By the court: JAMES B. ROBB, *Clerk.*

Mr. Minot acknowledges notice of this order, and waives further.

JAMES B. ROBB, *Clerk.*

This cause was entered at the May term of this court, A. D. 1847, and was thence continued from term to term until this present term, when the final decree was entered in the words following, to wit:

CIRCUIT COURT, U. S., *Massachusetts district, ss.*

May term, 1848, to wit, May 25, 1848. In equity.

SAMUEL PLATT
vs.
DAVID MCCLURE.

This cause came on to be heard at this present term, and was argued by counsel; and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed, that said bill do stand dismissed, with costs to the respondent.

By the court: JAMES B. ROBB, *Clerk*.

And on the twenty-seventh day of May, A. D. 1848, the complainant filed his appeal to the Supreme Court of the United States in the words following, to wit:

And now the said Platt comes and claims an appeal from the decision ~~of this~~ honorable court to the Supreme Court of the United States, and is ready to give such bonds as are required of him, and respectfully prays that his appeal may be allowed.

SAMUEL PLATT.
By C. M. ELLIS, *his sol'r*.

Whereupon said appeal is allowed by the court.

Attest: JAMES B. ROBB, *Clerk*.

I, James B. Robb, clerk of the circuit court of the United States, for the first circuit, within and for the district of Massachusetts, certify, that the foregoing is a true copy of the bill, answer, depositions, and other proceedings in the cause entitled Samuel Platt, in equity, vs. Amory Houghton et al.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, this twenty-eighth day of November, A. D. 1848, and in the seventy-third year of the independence of the United States of America.

[SEAL.]

JAMES B. ROBB, *Clerk*.

SUPREME COURT OF THE UNITED STATES.

No. 165.

CHARLES S. JONES, PLAINTIFF,

VS.

MASON E. SAUNDERS.

CERTIFICATE OF DIVISION FROM CIRCUIT COURT UNITED STATES FOR SOUTHERN DISTRICT OF MISSISSIPPI.

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Gideon & Co., Printers.

Circuit court, U. S.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Cause pending in said court.

CHARLES S. JONES
vs.
MASON E. SAUNDERS.

Copy of declaration.

Circuit court of the United States, May term, 1842.

UNITED STATES OF AMERICA,
Southern district of Mississippi.

Mason E. Saunders, a citizen of the State of Mississippi, was summoned to answer Charles S. Jones, a citizen of the State of Virginia: whereupon the said Charles S. Jones, by attorney, complains of the said Mason E. Saunders, of a plea of trespass on the case upon promises, for that, whereas the said defendant, by the signature of M. E. Saunders, on the twenty-second day of May, in the year eighteen hundred and thirty-nine, at Woodville, to wit, at the district aforesaid, made his certain bill of exchange in writing, bearing date the day and year aforesaid, and then and there directed the said bill of exchange to R. L. Throckmorton, Wilkinson c'ty, Miss'i, (meaning Wilkinson county, in the State of Mississippi,) and thereby requested the said R. L. Throckmorton, on the first day of December next, after the date of said bill of exchange, to pay to the order of Messrs. Dabney & Thompson, one thousand dollars, value rec'd, (meaning value received,) payable and negotiable at the Commercial Bank of New Orleans, and to charge the same to his the said defendant's account, and then and there delivered the said bill of exchange to the said Messrs. Dabney & Thompson, which said bill of exchange the said R. L. Throckmorton afterwards, to wit, on the same day and year last aforesaid, at the district aforesaid, in writing accepted, payable as therein specified; and the said Messrs. Dabney & Thompson, who [are] citizens of the State of Virginia, to whose order the money specified in said bill of exchange was to be paid, afterwards, to wit, on the day and [year] aforesaid, at the district [aforesaid,] by their firm name of Dabney & Thompson, endorsed the said bill of exchange, and delivered the same to the said plaintiffs. And the said plaintiff avers, that afterwards, to wit, on the fourth day of December, A. D. 1839, at the said Commercial Bank of New Orleans, to wit, at the district aforesaid, the said bill of exchange, endorsed as aforesaid, was duly presented and shown to the proper officer at the said Commercial Bank, and payment of the said sum of money therein specified was then and there demanded, but neither the said bank, nor the said acceptor, nor any person for him, would pay the said sum of money in said bill specified, or any part thereof, but wholly refused and neglected so to do.

Whereupon the said bill of exchange afterwards, to wit, on the day and year last aforesaid, at the place aforesaid, was duly protested for non-payment thereof, of all which said several premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, had notice. And whereas, also, the said defendant, by the signature of M. E. Saunders, on the 22d day of May, A. D. 1839, at Woodville, to wit, at the district aforesaid, made his other certain bill of exchange in writing, bearing date the day and year last aforesaid, and then and there directed the said last named bill of exchange to R. L. Throckmorton, Wilkinson c'y, Miss., (and thereby requested the said Throckmorton, on the first day of December, then next, to pay to the order of Messrs. Dabney & Thompson one thousand dollars, value rec'd, payable and negotiable at the Commercial Bank of New Orleans, and then and there delivered the said bill of exchange to said payees; which said bill the said Throckmorton afterwards, to wit, on the day and year last aforesaid, upon sight thereof, in writing accepted, and the said Dabney & Thompson, who are citizens of Virginia, then and there endorsed and delivered said bill to the said plaintiff. And the said plaintiff avers, that afterwards, to wit, on the fourth day of December, A. D. 1839, when said bill became due and payable at said bank, to wit, at the district aforesaid, the said bill of exchange was presented at said bank for payment thereof, but that neither the said acceptor nor any other person for him, would or did pay the same, or any part thereof, but wholly refused so to do. Whereupon, the said bill of exchange afterwards, to wit, on the day and year and at the place last aforesaid, was duly protested for non-payment thereof; and the said plaintiff further avers, that neither at the time of making said bill, nor at any time until the protest thereof, did the said defendant have any funds in the hands of said Throckmorton for the payment of said bill; by means of which said several premises the said defendant became liable to pay to the said plaintiff the said sums of money in said bills of exchange specified, when he should be thereunto afterwards requested; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, undertook and promised the said plaintiff to pay him the said several sums of money in said bills of exchange specified when he should be thereunto afterwards requested. Yet the said defendant, although often requested, has not paid the said several sums of money above mentioned, or either or any part thereof, to said plaintiff, but to pay the same, or any part thereof, said defendant hath hitherto wholly refused and still refuses, to the damage of said plaintiff of two thousand dollars, and therefore he sues, &c.

QUITMAN & McMURRAN,
Plaintiff's attorneys.

Copy of bill sued on.

" Dolls. $1,000. WOODVILLE, *May* 22, 1839.

" On the 1st of December next of this my first of exchange (second ' of same tenor and date unpaid) pay to the order of Messrs. Dabney & ' Thompson, one thousand dollars, value rec'd, payable and negotiable ' at the Commercial Bank of New Orleans, and charge of acct. of your ' ob't serv't, M. E. SAUNDERS.

" To R. L. THROCKMORTON, *Wilkinson c'y, Miss'i.*"

Accepted payable as within specified.
Endorsed—" Dabney & Thompson."

1st plea.

And the said defendant comes and defends the wrong and injury, when, &c., and says that he did not undertake or promise, in manner and form as the said plaintiff hath thereof alleged against him; and of this he puts himself upon the country.

SAUNDERS & PRICE,
Attorneys for defendant.

And the plaintiff doth the like.

QUITMAN & McMURRAN,
For plaintiff.

2d plea.

And the said defendant for further plea in his behalf, by leave of the court for this purpose first had and obtained, says actio non, because he says the sole consideration of the bill of exchange in said plaintiff's declaration sued on was the bargain, sale, and delivery at, to wit, the county of Wilkinson and State of Mississippi, of a slave by Messrs. Dabney and Thompson, the payees of said bill of exchange, to R. L. Throckmorton, the acceptor of said bill of exchange, unlawfully introduced as merchandise and for sale into the State of Mississippi, after the first day of May, A. D. 1833, by the said Messrs. Dabney & Thompson, and this the said defendant is ready to verify. Wherefore, he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

SAUNDERS & PRICE,
Defendant's Attorneys.

3d plea.

And for further plea in his behalf the said defendant, by leave of the court for that purpose first had and obtained, says, actio non, because he says that the sole consideration of the bill of exchange in said plaintiff's declaration sued on was the bargain, sale, and delivery at Wilkinson county, State of Mississippi, of a slave by Messrs. Dabney & Thompson, the payees of said bill of exchange, to R. L. Throckmorton, the acceptor of said bill of exchange, unlawfully brought and imported by the said Dabney & Thompson as merchandise and for sale into the State of Mississippi, after the thirteenth day of May, in the year of our

Lord eighteen hundred and thirty-seven, and this he is ready to verify; wherefore he prays judgment, if the said plaintiff ought to have and maintain his aforesaid action thereof against him.

SAUNDERS & PRICE,
Defendant's attorneys.

Plaintiff's demurrer to 2d and 3d pleas.

And the said plaintiff by his attorneys comes and for answer to the pleas of the said defendant by him secondly and thirdly above pleaded says, that he ought not to be barred from having and maintaining his aforesaid action against the said defendant by reason of any thing in said pleas contained; and that the matters and things in said pleas set forth, in manner and form as the same are therein set forth and pleaded, are not sufficient in law to bar the action of said plaintiff; wherefore this plaintiff doth demur to said pleas, and prays the judgment of this court whether he ought to be compelled to make any other or further answer to said pleas.

QUITMAN & McMURRAN, *Plt'ff's att'ys.*

And the said defendant joins demurrer.

SAUNDERS & PRICE, *Def's att'ys.*

All objections to matters of form merely in said pleas waived.

QUITMAN & McMURRAN.

This cause having been submitted to the court, at a previous day of this term, on the demurrer of plaintiff to the second and third pleas of defendant, and their honors having taken time to consider, and not being able to agree in opinion whether the matters in said pleas or either of them alleged are or are not a good and valid bar in law to the action, it is therefore ordered, at the request of the solicitors for all parties, that said difference of opinion be certified to the Supreme Court of the United States for their decision, whether the matters in said pleas, or either of them, set forth and shown, are or are not in law a bar to said action.

(Signed) P. V. DANIEL,
S. J. GHOLSON,

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Circuit court, U. S.

I, William H. Brown, clerk of said circuit court, do hereby certify, that the foregoing five pages contain a true and correct copy of the papers in the above stated case, together with the certificate of the difference of opinion in said case, ordered to be certified to the Supreme Court of the United States, at the May term, A. D. 1844, of said circuit court.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said court, at Jackson, the 2d day of October, A. D. 1844.

W. H. BROWN, *Clerk.*